

NATIONAL COMPANY LAW APPELLATE TRIBUNAL,
PRINCIPAL BENCH, NEW DELHI

Transfer Appeal (AT) No. 1 of 2025 in Company Appeal (AT) (CH)
(Insolvency) No. 210 of 2023 &
I.A. No. 699, 1166 of 2023 & 487, 577, 612, 613, 615, 730, 1291,
1308, 1383, 1544, 1600 of 2025

(Arising out of Order dated 14.07.2023 passed by the Adjudicating Authority (National Company Law Tribunal), Court No.1, Hyderabad Bench, Hyderabad in CP(IB) No.263/9/HDB/2022)

IN THE MATTER OF:

Attluru Sreenivasulu Reddy, Suspended Director
of KLSR Infratech Ltd

...Appellant

Versus

AS Met Corp Pvt Ltd & Anr.

...Respondents

Present:

For Appellant : Mr. Arun Kathpalia, Sr. Advocate with Ms. Honey Satpal, Mr. Mayan Jain, Mr. Prashant Reddy, Mr. Akash Agarwalla, Mr. Aman and Ms. Diksha Singh, Advocates.

For Respondents : Mr. Sanjay Ghose, Sr. Advocate with Mr. Rohan Mandal, Mr. Rahul Gupta and Mr. Siddharth Mishra, Advocates for R1.

Mr. Ashwini Kumar Upadhyay, Mr. Nikhil Upadhyay and Mr. Nitin Upadhyay, Advocates for I.A. 1600 of 2025

J U D G M E N T

ASHOK BHUSHAN, J.

Transfer Appeal (AT) No.1 of 2025 has been registered in the Principal Bench of National Company Law Appellate Tribunal consequent to the order passed by Hon'ble Supreme Court dated 14.11.2025 in ***Writ Petition (Criminal) No.440/2025 in M/s A.S. Met Corp Pvt. Ltd. vs. The Registrar & Ors.*** The Hon'ble Supreme Court by the order dated 14.11.2025 transferred the Company Appeal (AT)(CH)(Ins.) No.210 of

2023 to be heard by Principal Bench of the National Company Law Appellate Tribunal (“**NCLAT**”) at New Delhi. In Paragraphs 5 and 6 of the order the Hon’ble Supreme Court directed as follows:

“**5.** In the interest of proper adjudication of the pending Company Appeal, we deem it appropriate to direct that Company Appeal (AT) (CH)(Ins) No.210/2023, which is pending before the NCLAT, Chennai Bench, be transferred forthwith, along with all records, to the Principal Bench of the NCLAT at New Delhi.

6. In the peculiar facts and circumstances of the case, we request the Hon’ble Chairperson of the NCLAT to list the said appeal before the bench presided over by His Lordship and decide the same, after issuing notice and giving adequate hearing to the contesting parties, at the earliest. While the petitioner before us has taken a fair stand to extend full cooperation for an early adjudication of the appeal, we direct respondents nos.4 and 5 to, likewise, ensure that no impediment is caused in the expeditious disposal of the appeal. The aforesaid respondents as well as their counsel will extend full cooperation to the bench of the Hon’ble Chairperson for expeditious and timely adjudication of the said appeal.”

2. Consequent to order of the Hon’ble Supreme Court, the Transfer Appeal (AT) No.1 of 2025 was listed before a Bench presided over by the Chairperson on 03.12.2025, on which date of hearing, both the parties were permitted to file short written submissions and 10.12.2025 was fixed as next date of hearing. After the Appeal being listed on various subsequent dates, hearing has been completed on 25.02.2026, on which date judgment was reserved. While reserving the judgment, parties were granted liberty to submit their short notes of submissions within a week. Interim order operating in the Appeal was allowed to continue.

3. Company Appeal (AT) (CH) (Ins.) No. 210 of 2023 has been filed by the Suspended Director of the M/s. KLSR Infratech Ltd. challenging the order dated 14.07.2023 passed by National Company Law Tribunal (“**NCLT**”), Hyderabad Bench-1 in CP(IB) No.263/HDB/2022. By the impugned order dated 14.07.2023, the petition filed under Section 9 by A.S. Met Corp Pvt. Ltd. (Respondent herein) has been admitted. Challenging which order Company Appeal (AT) (CH) (Ins.) No. 210 of 2023 was filed before the Chennai Bench of this Tribunal, in which Appeal, this Tribunal passed following interim order on 18.07.2023:

“**18.07.2023:** After hearing Counsel for the parties, we have found that there are arguable points involved in this case, therefore, let Notice be issued to the Respondents.

At this stage, Sh. Sriram Venkatavaradan accepts Notice on behalf of Respondents and prays for time to file the Counter. Let the Counter be filed within a period three weeks i.e., upto 07.08.2023. Rejoinder, if any, may be filed upto 04.09.2023.

List ‘For Hearing’ on 20th September, 2023.

Till then further proceedings shall remain stayed.”

4. The interim order passed in Company Appeal (AT) (CH) (Ins.) No. 210 of 2023 was continued from time to time.

5. We need to notice the background facts giving rise to Company Appeal (AT) (CH) (Ins.) No. 210 of 2023:

- (i) The Corporate Debtor (“**CD**”) - M/s. KLSR Infratech Ltd. is engaged in contracting work with respect to rural water supply for more than 25 years. In the year 2017 the CD had

acquired a company named M/s. Midfield industries Ltd., which is engaged in the production and supply of Steel Strips. On acquisition of the company, the previous management of the company was retained and one Mr. Allu Nagesh was made Independent Director and was delegated the duty of managing the day-to-day affairs of the Company.

- (ii) The Operational Creditor (“**OC**”) – M/s A.S. Met Corp Pvt. Ltd. had been supplying the goods C.R.F.H Strips, C.R.F.H. Coils and Steel Strapping Seals etc. since the year 2019. The practice between the OC and the CD was to make payment against goods supplied by issuing Letter of Credit. On issuance of Purchase Order by the CD, the supplier would raise proforma invoice and on being forwarded of the same, the CD would request its Bank to issue Letter of Credit, which will be forwarded to the suppliers. The supplier would either discount the invoices or await payment under the Letter of Credit, payable within 90 days. All the suppliers, including the OC had discounted the Letter of Credit. The CD used to repay the same to the Bank at the end of the Letter of Credit period together with interest. Invoices raised by the OC to the CD commencing from 28.11.2019 to 18.08.2021 for which Letter of Credit was issued and payments were received by OC through discounting. Between July 2021 and December 2021, invoices were raised by OC, which were paid

by discounting of Letters of Credit, against which invoices, the CD issued Letters of Credit. In December 2021, it was noticed by the CD that huge outstanding of about Rs.16,86,80,746/- was being shown as receivables. On scrutiny of accounts, invoice-wise both in respect of sales and purchases, the management decided to stop procurement of raw materials. In December 2021, last payment made to the OC was on 20.12.2021 through the Bank against invoices issued by the OC.

- (iii) The OC on 31.05.2022 sent a Demand Notice claiming an amount of Rs.3,79,06,143/- due as on 31.05.2022. Along with Demand Notice, copy of the 15 invoices along with computation sheet was annexed. The Demand Notice was received by the CD by email on 14.06.2022. On 15.06.2022, the CD sent a reply to the Demand Notice. It was stated in the reply that there are no invoices, which are due to be paid to the OC. In the reply to Demand Notice, the CD informed that it has come to know that fictitious invoices were raised without the supply of materials by OC and OC is involved in fraud by colluding with employees of the CD. It was further pleaded that invoices for which the CD has already made payments were also fictitious and which matter is being investigated in detail. Serious allegations were made against the OC stating that the OC is involved in a fraud. It was

pleaded that there are no official communication either with respect to offers placed or quotations availed. It was mentioned that there were several instances, where CD has found that no goods were supplied under the invoices and complete details was stated to be furnished as and when needed. The reply further mentioned that invoices attached with the Demand Notice were not furnished earlier and were furnished for the first time along with the Demand Notice. It was mentioned that the CD has not received the materials as mentioned in the invoices. The OC was advised to withdraw the Demand Notice. Reply further stated that necessary legal action including filing of criminal complaint against the OC for cheating and forgery shall be taken.

- (iv) After completion of entire investigation on 30.06.2022, the CD filed an FIR for the offences under Section 406, 409, 420, 468, 471, 467, 381 read with 120B and 109 of Indian Penal Code against the OC and other suppliers which was transferred to Economic Offences Wing, Cyberabad. In the above FIR, certain employees of the CD, who had colluded with the suppliers were also named including one of the Director of the CD Mr. Allu Nagesh was also named in the FIR. Mr. Allu Nagesh and certain other officials of the OC were arrested by the Police.

(v) It was after filing of the FIR and arrest of several accused, the OC filed Section 9 Petition on 24.08.2022 being CP(IB) No.263/HDB/2022 with the NCLT Hyderabad. Counter/ reply affidavit was filed by the CD on 25.10.2022. An FIR was also filed by OC against the CD on 07.03.2023, which was registered. The CD filed an application before the Adjudicating Authority for receiving additional documents being IA No.731 and 732 of 2023. Both the applications were allowed on 26.05.2023 by the Adjudicating Authority. Parties filed their written submissions and by the impugned order dated 14.07.2023, Section 9 petition was admitted, against which order this Company Appeal was filed before the NCLAT Chennai Bench, in which an interim order was passed on 18.07.2023 as noted above.

6. In Transfer Appeal (AT) No.1 of 2025, two applications have been filed i.e. IA No.7775 of 2025 by the Appellant and IA No.1397 of 2026 by the Respondent/ Operational Creditor. IA No.7775 of 2025 was filed on 10.12.2025 by the Appellant praying for following prayers:-

“a. Pass an order to take on record the order dated 02.07.2025 passed by the Deputy Commissioner (ST), Begumpet Division in the matter of AS Met Corp Private Limited;
b. Pass any other order as this Hon’ble Tribunal may deem fit and appropriate.”

7. In IA No.7775 of 2025, on 22.12.2025, following order was passed:-

“22.12.2025: In IA No. 7775 of 2025, the objections, if any, may be filed within two weeks from today. Rejoinder, if any, may be filed within a week, thereafter. List this appeal on 22.01.2026 at 02:00 P.M. along with all pending IAs, if any.
Interim order to continue.”

8. When Transfer Appeal (AT) No.1 of 2025 was further taken up on 05.02.2026, prayer was made by Counsel for Respondent No.1 for seeking liberty to file an Additional-Affidavit to bring certain materials on record which permission was granted. Order dated 05.02.2026 is as follows:-

“05.02.2026: Shri Kathpalia, Ld. Counsel for the appellant has completed his submissions. Request has been made on behalf of the Ld. Counsel for the respondent No.1 to hear submission in reply on 09.02.2026. Ld. Counsel for the respondent no.1 seeks liberty to file and additional-affidavit to bring certain material on record, he may do so by 09.02.2026 after serving copy to the appellant.

Resolution Professional has also appeared.

List this appeal on 09.02.2026 at 02:00 P.M. as part-heard.

Interim order to continue.”

9. Transfer Appeal was further heard on 09.02.2026 on which date order was passed allowing IA No.7775 of 2025. It was also noticed that Respondent/Operational Creditor has filed documents which was permitted by earlier order i.e. GST Return to which time was granted to the Appellant to file response. It was thereafter, IA No.1397 of 2026 was

filed on 19.02.2026 by Operational Creditor seeking permission to produce additional documents which were annexed along with the IA. Response to the IA No.1397 of 2026 was also filed by the Appellant on 25.02.2026. Transfer Appeal was heard on 25.02.2026 on which date parties were heard and hearing completed. Learned Counsel for the Respondent No.1 during course of hearing referred to and relied on documents which were annexed along with the IA No.1397 of 2026 as well as documents were also relied by the Appellant as referred to the counter affidavit in IA No.1397 of 2026. Parties having permitted to refer the documents. IA No.1397 of 2026 is also allowed.

10. We have heard Shri Arun Kathpalia, Learned Senior Counsel appearing for the Appellant and Mr. Sanjay Ghose, Learned Senior Counsel appearing for the Respondent No.1. Shri Ashwini Kumar Upadhyay, Learned Counsel has appeared for Applicant in IA No.1600 of 2025. Learned Counsel for the IRP has also appeared.

11. Shri Arun Kathpalia, Learned Senior Counsel appearing for the Appellant submits that the Adjudicating Authority committed error in passing order dated 14.07.2023 admitting Section 9 application filed by the Respondent No.1 whereas immediately on receipt of the demand notice dated 31.05.2022, the Corporate Debtor had issued reply to demand notice dated 15.06.2022 disputing the claim raised by the Operational Creditor. Reply to demand notice was a detailed reply giving various reasons for disputing the claim of the Operational Creditor. It was stated in the reply that company has turnover of Rs.400 Crores and it is

making payments to all vendors without fail over 25 years of business. In December 2021, Company came to know that fraud has happened at factory amounting to crores of rupees by vendors/ clients of steel scrapping material by colluding with employees of the Corporate Debtor. Company started detailed investigation from 20.12.2021 holding the entire process at factory. In the official e-mail id, no requisition made to vendors for procurement of raw materials and order received are reflected, entire activity was stopped from last week of December 2021. According to the record of the Corporate Debtor, there are no invoices which are due to be paid to the Operational Creditor earlier to December 2021. Letter of credits which were issued by Corporate Debtor were utilised by Operational Creditor against invoices of December 2021. There were no old pending invoices. There are many fake invoices which the Corporate Debtor has come across. The Corporate Debtor has to receive payment from the Operational Creditor against the materials supplied. Some of the materials were returned to the Operational Creditor. He submits that fictitious invoices were raised without supply of materials. The Corporate Debtor is going to initiate necessary legal action against all persons involved in the fraud amounting crores of rupees and Corporate Debtor is going to file petition with revenue department also. It was also further stated that the Corporate Debtor has come to know that invoices for which payments have also been made were also the fictitious invoices. It was after detailed reply to notice which was clearly a notice of dispute within the meaning of Sections 8 and 9, there was no occasion for Adjudicating Authority to admit Section 9 application. In reply to Section

9 application, the Corporate Debtor has dealt with all 15 invoices which were basis of demand notice and Section 9 application. It was pleaded that with respect to Invoice No.0092 dated 26.07.2021, Invoice No.0124 dated 28.08.2021 and Invoice No.0207 dated 25.10.2021, amounts have already been fully paid. With respect to Invoice No.0078, it was pleaded that amounts were partly paid and balance adjusted against outstanding dues from the Operational Creditor. There were large numbers of duplicate invoices. With respect to Invoice Nos.0196, 0197 & 0198 dated 20.10.2021 and Invoice Nos.0201 and 0202 dated 21.10.2021 were all fabricated. There were no vehicle movement. With respect to Invoice Nos.0227, 0228, 0229 and 0234, materials were rejected which was admitted by e-mail dated 14.02.2022 of the Operational Creditor. It is submitted that the Adjudicating Authority has erroneously observed, that although it was pleaded by Operational Creditor that input credit towards the invoices have been claimed by the Corporate Debtor same was never disputed. Before the GST Authority, the Corporate Debtor, who is disputing the invoices was to exercise its statutory rights of raising a dispute before the authorities, so that the subject invoices would have been decided. The First Information Report which was lodged by the Corporate Debtor on 30.06.2022 was post demand notice dated 31.05.2022. It is submitted that the Adjudicating Authority also erred in relying on Affidavit dated 15.03.2022 given by Allu Nagesh acknowledging the debt, which Allu Nagesh has colluded with the Operational Creditor in issuing fake invoices. The Affidavit dated 15.03.2022 was obtained on a stamp paper purchased by the Operational Creditor which clearly indicate

that the said affidavit was not in normal course of business and the employees of the Appellant against whom FIR has been lodged and criminal proceedings are going on has issued Affidavit to help the Operational Creditor. The acknowledgement on letter dated 31.03.2022 regarding confirmation of account relied by OC was never acknowledged by CD and signature on which by the same Allu Nagesh, which cannot be relied. Prior to issuance of demand notice dated 31.05.2022 on the basis of 15 invoices, the said invoices were never sent to the Corporate Debtor nor payment of aforesaid invoices were even demanded from the Corporate Debtor. The payment against the goods received by the Corporate Debtor was through letter of credit which letter of credits are utilised by the supplier by discounting the invoices or receiving the payment at the end of period of letter of credit. With respect to invoices of December 2021, payments have been received by letter of credit, hence, it cannot be accepted that any invoices prior to December 2021 was due. The Corporate Debtor after coming to know about the fraud being committed by some of the employees of the Corporate Debtor in collusion with the suppliers including the Operational Creditor has started the audit of the factory from 22.12.2021 and stopped all purchases which fact of carrying out investigation was also mentioned in the reply to demand notice dated 15.06.2022. The Corporate Debtor had lodged an FIR against some of the employees of the Corporate Debtor as well as Operational Creditor and other suppliers on basis of which investigation commenced and charge-sheet has been filed. FIR was lodged on 30.06.2022 and Section 9 application was filed thereafter on 22.08.2022. Piyush Mehta,

Operational Creditor was one of the accused who claimed to sign the invoices. Section 9 proceeding was initiated by Operational Creditor not for resolution of the Corporate Debtor but was malicious intent to shield the Operational Creditor from criminal prosecution. The Adjudicating Authority further erred in observing that even after start of the investigation by the Corporate Debtor, payments have been made to the Operational Creditor in March 2022 which was not the fact. Last payment was made on 20.12.2021 in respect of outstanding invoices by discounting the invoices by (OC) supplier against letter of credit. After initiation of audit by Corporate Debtor, no payments have been made to Operational Creditor and view taken to the contrary by the Adjudicating Authority is against the record. The finding of the Adjudicating Authority that the plea of pre-existing dispute as raised in the reply dated 15.06.2022 cannot be accepted since Corporate Debtor made payment in respect of invoices without any demur post December 2021 is wholly incorrect and against the record. The view of the Adjudicating Authority that defence raised by Corporate Debtor is spurious and a moonshine defence is wholly incorrect and against the record. Even if the criminal proceedings is not relied which was initiated by the Corporate Debtor prior to filing Section 9 application, there was ample materials on the record to indicate that dispute has arisen between the parties prior to issuance of demand notice dated 31.05.2022. The factum of conducting audit from 22.12.2021 is a fact, which is not denied and all purchases were stopped from 22.12.2021 itself indicate that after having detected the fraud with collusion of some employees of the Corporate Debtor, audit

was initiated by the Corporate Debtor. Neither any purchase orders were issued to the Operational Creditor after 22.12.2021 nor any payment has been made.

11.1 In reply to Section 9 application, the Corporate Debtor has given details pertaining to invoices claimed in the demand notice and has explained in different sub-paras of reply denying the payability against the invoices claimed under the demand notice. Adjudicating Authority has not adverted to the detailed reply given to Section 9 application explaining that no operational debt is payable. It was never pleaded by the Operational Creditor in Section 9 application or any of the pleadings that any input credit has been taken by the Corporate Debtor from the GST paid by the Operational Creditor pertaining to invoices in question. Adjudicating Authority has observed that the Corporate Debtor has not disputed the contentions of the Operational Creditor that Corporate Debtor has claimed credit input pursuant to filing of GST. It is submitted by learned Senior Counsel that only pleading by Operational Creditor was that GST has been paid by the Operational Creditor with respect to invoices in question. There was no pleading of any input credit having been taken by the Corporate Debtor. The Corporate Debtor vehemently denied that it has been taken any input credit out of the invoices which was subject matter of demand. Present is a case where there was overwhelming materials to indicate pre-existing dispute which has all been ignored by the Adjudicating Authority while proceeding to admit. The Corporate Debtor is a profit running company which has shown

disclosed profit from last five years from 2021-2022. The turnover of the company in 2021-2022 was more than Rs.400 Crores and it has earned the profit of more than Rs.39 Crores. The company which is making continuous profit cannot be held to be insolvent company unable to pay its debt. Learned Senior Counsel has made his submission in respect to invoices were basis of demand notice which were also clearly pleaded in reply to Section 9 application. It is submitted that there was clear mismatch in the e-bills and invoices. In some of the cases, e-bills were generated even prior to date of invoices. The vehicle for transport mentioned where in some cases found to be Nano Car and other two wheelers. There were large number of discrepancies in the e-way bill and invoices which was all ignored. The present is a case where Operational Creditor has been accused of criminal offences on basis of FIR lodged by the Corporate Debtor investigation has been completed and charge-sheet has been filed. Some of the employees of the Corporate Debtor as well as Operational Creditor were also arrested. Section 9 application filed by the Operational Creditor was nothing but a measure taken to shield it from criminal prosecution and to create hurdles in running of the Corporate Debtor. Section 9 petition was not maintainable because underlying contract i.e. purchase order were not filed by the Operational Creditor. Learned Counsel for the Appellant further submitted that the GST Department has passed assessment order dated 02.07.2025 making a detailed assessment of Operational Creditor which assessment order has confirmed that E-way bills/ invoices raised by the Operational Creditor were without supply of materials and there was no vehicle movement. The

assessment order dated 02.07.2025 which has been taken on record fully proves the defence which was taken by the Corporate Debtor in its reply to demand notice and reply to Section 9 application. The assessment order dated 02.07.2025 clearly found the issuance of fictitious invoices by Operational Creditor without movement of goods, which assessment order was unsuccessfully challenged by the Operational Creditor before the High Court by filing a Writ Petition No.29376 of 2025 which Writ Petition has been dismissed by Division Bench of the High Court of Telangana on 06.10.2025. The Operational Creditor had further filed a Writ Petition before the Telangana High Court being Writ Petition No.5541 of 2026 which petition was filed on 17.02.2026 making a prayer that GST assessment order dated 02.07.2025 as disclosed under the RTI Act shall not be acted upon or relied upon, giving effect to in the proceeding before the Hon'ble NCLAT. The Writ Petition dated 17.02.2026 which was filed after 09.02.2026 when IA No.7775 of 2025 filed by the Appellant to take GST assessment order dated 02.07.2025 on record was allowed, which Writ Petition has been dismissed by Telangana High Court on 19.02.2026. Operational Creditor has thus, filed Writ Petition in Telangana High Court that assessment order dated 02.07.2025 be not looked into by this Tribunal, which Writ Petition filed even after application was allowed by this Tribunal accepting the assessment order on record. GST assessment order dated 02.07.2025 clearly exposes all fraudulent activities, fictitious invoices claim of supply of goods without movement of goods which assessment order fully proves the case set up by the Corporate Debtor which was wrongly rejected by the Adjudicating Authority. The GST

assessment order is relevant for the issue which had arisen in the proceeding which clearly proves the fraud and malafide proceeding initiated by the Operational Creditor. The present is a case where Section 9 proceedings were initiated by Operational Creditor fraudulently and maliciously. Operational Creditor deserves to be imposed penalty under Section 65 of the IBC in addition to dismissal of Section 9 proceeding with cost.

12. Learned Counsel appearing for the Respondent refuting the submissions of the Counsel for the Appellant submits that there was no pre-existing dispute between the parties. The initiation of criminal proceeding by lodging an FIR on 30.06.2022 was subsequent to issuance of demand notice dated 31.05.2020 which cannot be relied as pre-existing dispute between the parties. Adjudicating Authority has rightly come to the conclusion that defence raised by the Corporate Debtor is spurious and a moonshine defence. The Operational Creditor has paid the GST on the invoices which was also pleaded in Section 9 application. In the written submissions filed by the Operational Creditor before the Adjudicating Authority, it was also pleaded that the Corporate Debtor has taken benefit of input tax credit with respect to GST paid by the Operational Creditor which factum was never denied. Learned Counsel for the Respondent has relied on relevant GST Form submitted by Operational Creditor which is brought on record along with IA No.1397 of 2026. It is submitted that relevant tax return filed by the Operational Creditor clearly reflects the input tax credit admissible to the Corporate

Debtor which were utilised. Registration of FIR after demand notice cannot be any basis. No copy of so-called internal audit report conducted in December 2021 has been placed on record by the Corporate Debtor. Any FIR lodged after issuance of demand notice cannot rely for any pre-existing dispute. The disputes raised by the Corporate Debtor regarding 14 invoices of demand notice are spurious dispute. The proceedings under the IBC are summary in nature. Detailed examination of disputed fact is not in the scope of IBC. The existence of pre-existing dispute must be determined as on the date of issuance of demand notice and not on the basis of illusory or moonshine defence. The submission of the Appellant that certain invoices stood partly or fully paid is false and incorrect. Allegation of duplicate bills is also without any substance. The mere fact that quantity claimed in two invoices as well as in the amount is same cannot be a reason to discard the invoices. Alleged discrepancies in the E-way bills are also unsubstantiated and baseless. The assessment order dated 02.07.2025 cannot be placed on record in this proceeding. Uncertified copy of purported GST order has been filed along with the written submissions on 03.07.2025 whereas the date of the order was 02.07.2025. Uncertified copy of the purported GST assessment order is filed along with IA No.7775 of 2025 whereas RTI application was made subsequently. The Corporate Debtor is insolvent and is chronically bankrupt. Income Tax Department had issued order on 17.09.2021 demanding Rs.63,57,40,176/- only. M/s. Electrosteel Castings Ltd. had invoked 11 numbers of bank guarantees worth of Rs.18 Crores. Bank account was also freezed by Union Bank of India. Recovery suit has also

been filed against the Corporate Debtor by one Sri Balaji Metal Trading Company. The Corporate Debtor has abused the process of the Courts to suit his own ends. Payments have been made by the Corporate Debtor to the Operational Creditor subsequent to December 2021 without any demur which clearly proves that the bogie of conducting audit in December 2021 is baseless and without any basis. The Operational creditor has rightly initiated proceeding on basis of 14 unpaid invoices. Amount claimed in the invoices was more than Rs.1 Crore. There being default committed by the Corporate Debtor in making payment of unpaid invoices, Adjudicating Authority has rightly admitted Section 9 application. It is settled law that when any default is committed by the Corporate Debtor for an amount of more than Rs.1 Crore, the Operational Creditor is fully entitled to initiate proceeding under Section 9.

13. Shri Ashwini Kumar Upadhyay, Learned Counsel has also appeared in support of IA No.1600 of 2025 represented by its Director Mr. Saurabh Agarwal which was filed by one M/s. Bengal Cold Rollers Pvt. Ltd. praying for Applicant to intervene in the Appeal. Shri Upadhyay has also referred to a Writ Petition No.19 of 2026 filed by Mr. Saurabh Agarwal in the Hon'ble Supreme Court. The Applicant has submitted that the management of KSR Infratech Pvt. Ltd. be handed over to the IRP.

14. Learned Counsel for both the parties have placed reliance on judgments of this Tribunal and the Hon'ble Supreme Court which we shall refer to while considering the submissions in detail.

15. The Adjudicating Authority vide order dated 14.07.2023 has admitted Section 9 application. Adjudicating Authority in paragraph X has framed following two questions for consideration:-

“1. Whether the documentary evidence furnished with the application shows that the operational debt of a sum over rupees one crore due and payable by the respondent exists? If so, whether the respondent defaulted in payment of the same?

2. Whether there is existence of dispute between the parties or record of pendency of suit or arbitration proceedings filed before the receipt of the Demand Notice of the unpaid operational debt in relation such dispute?”

16. The findings of the Adjudicating Authority have been returned in paragraph XXII to XLVI. Question No.1 was answered in favour of the Operational Creditor. Relying on debt acknowledgment letter dated 15.03.2022, Adjudicating Authority further held that it is not proper to place reliance on FIR. On Point No.2, although Adjudicating Authority held that CD can also raise dispute in reply to Section 9 application but pre-existing dispute so raised shall be one that should exist prior to reply to demand notice. The pre-existing dispute raised by the Corporate Debtor is a feeble contention. The Corporate Debtor has admittedly made part payment in respect of some of the invoices without any demur post December 2021. Adjudicating Authority has held that plea of pre-existing dispute as to operational debt is spurious and a moonshine defence. Adjudicating Authority after recording its conclusion on the above two

questions have directed for admission of Section 9 petition which order is challenged in this Appeal.

17. From the submissions which have been raised by the Counsel for the parties and materials on record, following are questions which arise for consideration:-

- (I) Whether reply dated 15.06.2022 issued by Corporate Debtor in response to demand notice dated 31.05.2022 is 'notice of dispute' within meaning of Section 9(5) of the IBC?
- (II) Whether defence raised by the Corporate Debtor in notice of dispute as well as in the reply to Section 9 application are spurious and a moonshine defence as held by the Adjudicating Authority?
- (III) Whether GST assessment order dated 02.07.2025 which is taken on record by allowing IA No.7775 of 2025 filed by the Appellant and materials brought on record along with IA No.1397 of 2026 filed by Respondent are relevant and support the case set up of the Operational Creditor or the Corporate Debtor?

18. Before we enter into rival submissions of the parties, we need to first notice the statutory scheme under the IBC with respect to filing an application by Operational Creditor and the law laid down in the above regard.

19. Section 8 deals with ‘insolvency resolution by operational creditor’. Section 8(1) contemplates that an operational creditor on the occurrence of default, deliver a demand notice. The Corporate Debtor within a period of 10 days of the receipt of the demand notice is obliged to bring the notice of the operational creditor existence of dispute, the payment of unpaid operational debt. Section 9 provides that after the expiry of the period of 10 days from the date of delivery of the notice or invoice demanding the payment if the operational creditor does not receive payment from the corporate Debtor or notice of the dispute under sub-section (2) of Section 8, operational creditor may file an application before the Adjudicating Authority. Section 9 (1) is as follows:-

“9. Application for initiation of corporate insolvency resolution process by operational creditor.

– (1) After the expiry of the period of ten days from the date of delivery of the notice or invoice demanding payment under sub-section (1) of section 8, if the operational creditor does not receive payment from the corporate debtor or notice of the dispute under sub-section (2) of section 8, the operational creditor may file an application before the Adjudicating Authority for initiating a corporate insolvency resolution process.”

20. Section 9(1) contemplates for filing an application by operational creditor in two circumstances i.e. if the operational creditor does not receive (i) payment from the corporate debtor or (ii) notice of dispute under sub-section (2) of Section 8. A plain reading of Section 9(1) indicate that when a notice of dispute is received, Section 9(1) does not

contemplate filing of an application under Section 9. Present is a case where admittedly notice of dispute was sent by the Corporate Debtor dated 15.06.2022 after receipt of demand notice dated 31.05.2022 by e-mail dated 14.06.2022. When a notice of dispute has been received, Section 9(5)(ii) provides as follows:-

“9. Application for initiation of corporate insolvency resolution process by operational creditor.

–(5) The Adjudicating Authority shall, within fourteen days of the receipt of the application under sub-section (2), by an order–

(ii) reject the application and communicate such decision to the operational creditor and the corporate debtor, if -

(a) the application made under sub-section (2) is incomplete;

(b) there has been [payment] of the unpaid operational debt;

(c) the creditor has not delivered the invoice or notice for payment to the corporate debtor;

(d) notice of dispute has been received by the operational creditor or there is a record of dispute in the information utility; or

(e) any disciplinary proceeding is pending against any proposed resolution professional: Provided that Adjudicating Authority, shall before rejecting an application under subclause (a) of clause (ii) give a notice to the applicant to rectify the defect in his application within seven days of the date of receipt of such notice from the adjudicating Authority.”

21. The statutory scheme thus, contemplates rejection of Section 9 application when notice of dispute has been received by the operational creditor or there is a record of default in the information utility. Present is a case where notice of dispute has been received on 15.06.2022.

22. Few judgments of the Hon'ble Supreme Court need to be noticed where Section 9 of the IBC came for consideration. The most celebrated judgment of the subject is judgment of the Hon'ble Supreme Court in **“MobiloX Innovations (P) Ltd. v. Kirusa Software (P) Ltd., (2018) 1 SCC 353”** explaining the law in Paragraph 51 of the judgment. The Hon'ble Supreme Court has laid down following:-

“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.”

23. The Hon’ble Supreme Court laid down that 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 was further observed that 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. It was held that ‘so long as a dispute truly exists in fact and is not spurious, hypothetical or illusory, the adjudicating authority has to reject the application’.

24. The Hon’ble Supreme Court in **“K. Kishan vs. M/s. Vijay Nirman Company Pvt. Ltd.- Civil Appeal No.21824 of 2017”** decided on 14.08.2018 again reiterated the principle underlying under sub-section (5) of Section 9 after referring to Section 9(5)(ii)(d), following was observed:-

“A reading of Section 9(5)(ii)(d) would show that an application under Section 8 must be rejected if notice of a dispute has been received by the

operational creditor. In the present case, it is clear on facts that the entire basis for the notice under Section 8 of the Code is the fact that an Arbitral Award was passed on 21.07.2017 against the Appellant. As has been pointed out by us, this clearly appears from the gist of the case that was filed along with the insolvency petition. The fact that the reply of 16.02.2017 to the notice given under Section 8 was within 10 days, and raised the existence of a dispute, also cannot be doubted.”

25. Further, in paragraph 13 of the judgment, following was laid down:-

“13) Following this judgment, it becomes clear that operational creditors cannot use the Insolvency Code either prematurely or for extraneous considerations or as a substitute for debt enforcement procedures. The alarming result of an operational debt contained in an arbitral award for a small amount of say, two lakhs of rupees, cannot possibly jeopardize an otherwise solvent company worth several crores of rupees. Such a company would be well within its rights to state that it is challenging the Arbitral Award passed against it, and the mere factum of challenge would be sufficient to state that it disputes the Award. Such a case would clearly come within para 38 of Mobilox Innovations (supra), being a case of a pre-existing ongoing dispute between the parties. The Code cannot be used in terrorem to extract this sum of money of Rs. two lakhs even though it may not be finally payable

as adjudication proceedings in respect thereto are still pending. We repeat that the object of the Code, at least insofar as operational creditors are concerned, is to put the insolvency process against a corporate debtor only in clear cases where a real dispute between the parties as to the debt owed does not exist.”

26. The Hon’ble Supreme Court in Civil Appeal No.4583 of 2022- **“M/s. S.S. Engineers vs. Hindustan Petroleum Corporation Ltd. & Ors.”** held that the operational creditor can only trigger the CIRP process when there is undisputed debt and default in payment thereof. It was clearly held that if the debt is disputed application of the operational creditor must be dismissed. In the above case, an application was filed by the operational creditor against Hindustan Petroleum Corporation Ltd. which was admitted by the NCLT, the application was filed by operational creditor- M/s. S.S Engineers which was admitted by NCLT on 12.02.2020. Hindustan Petroleum Corporation Ltd. filed an appeal challenging the order of admission which appeal was allowed against which the operational creditor filed the appeal in the Hon’ble Supreme Court. In the above context, the Hon’ble Supreme Court had occasion to consider the legislative scheme under Sections 8 and 9. In paragraph 16, following was laid down:-

“16. When examining an application under [Section 9](#) of the IBC, the Adjudicating Authority would have to examine (i) whether there was an operational debt exceeding Rupees 1,00,000/-

(Rupees One Lac); (ii) whether the evidence furnished with the application showed that debt exceeding Rupees one lac was due and payable and had not till then been paid; and (ii) whether there was existence of 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. If any one of the aforesaid conditions was not fulfilled, the application of the Operational Creditor would have to be rejected.”

27. It was further held that a plausible contention was raised and it was not for the Adjudicating Authority to make a detailed examination of the contentions and adjudicate the merits of the dispute. In paragraph 21, following was laid down:-

“21. Going by the test of existence of a dispute, it is clear that HBL had raised a plausible defence. It was not for the Adjudicating Authority to make a detailed examination of the respective contentions and adjudicate the merits of the dispute at this stage.”

28. The Hon’ble Supreme Court held in paragraph 32 that Operational Creditor can only trigger the CIRP process, when there is an undisputed debt and a default in payment thereof. Paragraph 32 is as follows:-

“32. There are noticeable differences in the IBC between the procedure of initiation of CIRP by a financial creditor and initiation of CIRP by an operational creditor. On a reading of [Sections](#)

8 and 9 of the IBC, it is patently clear that an Operational Creditor can only trigger the CIRP process, when there is an undisputed debt and a default in payment thereof. If the claim of an operational creditor is undisputed and the operational debt remains unpaid, CIRP must commence, for IBC does not countenance dishonesty or deliberate failure to repay the dues of an Operational Creditor. However, if the debt is disputed, the application of the Operational Creditor for initiation of CIRP must be dismissed.”

29. In subsequent judgment of the Hon’ble Supreme Court in **“Sabarmati Gas Ltd. v. Shah Alloys Ltd., (2023) 3 SCC 229”**, the Hon’ble Supreme Court referring to judgment in **“MobiloX Innovations (P) Ltd.”** (supra) again reiterated following in paragraphs 56 and 57:-

“56. In the contextual situation it is only apposite to be remindful of the observation in *MobiloX Innovations [MobiloX Innovations (P) Ltd. v. Kirusa Software (P) Ltd., (2018) 1 SCC 353 : (2018) 1 SCC (Civ) 311]* that in doing the act of separating the grain from chaff the Court need not to be satisfied that the defence is likely to succeed. It is enough that a dispute exists between the parties and in other words, what is to be seen is whether there was a plausible contention requiring investigation for the purpose of adjudication. Taking note of the nature of the dispute of the respondent as referred hereinbefore in respect of the claim made by the

appellant, we do not find any reason to disagree with the concurrent findings of the Tribunals that there existed a “pre-existing dispute” between the parties before the receipt of demand notice under Section 8 IBC. In other words, the dismissal of the application under Section 9 IBC on the ground of “pre-existing dispute” cannot be held to be patently illegal or perverse. We also do not find any reason, in the facts and circumstances, to hold that the case set up by the respondent was a patently feeble legal argument. At any rate, we are not inclined to brush aside the case of the respondent as spurious.

57. *We may hasten to add here that we shall not be understood to have held that the dispute set by the respondent regarding the dues is ultimately to be upheld. Certainly, when the expression “pre-existing dispute” is used it will only indicate the existence of a dispute prior to the receipt of a demand notice under Section 8 IBC, and the correctness or its truthfulness is a matter of evidence. In short, the respondent has succeeded in raising a dispute describable as “pre-existing dispute”. In that view of the matter once we find that the Tribunals have rightfully held that there existed a “pre-existing dispute” between the parties there cannot be an order of remand of the matter to the Tribunal for reconsideration of Section 9 application under IBC.”*

30. From the above precedent, the ratio of judgments can be carved out in following manner:-

(i) Where a notice of dispute has been issued by the corporate debtor after receiving demand notice Adjudicating Authority must reject the application under Section 9(5)(ii)(d).

(ii) 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.

(iii) So long as a dispute truly exists in fact and is not spurious, hypothetical or illusory, the adjudicating authority has to reject the application.

Question Nos. (I) & (II)

31. Both the above questions are being inter-related are taken together. The demand notice was issued by the operational creditor dated 31.05.2022. The demand notice read as follows:-

“Form 4

(See clause (b) of sub-rule (1) of rule 5)

*FORM OF NOTICE WITH WHICH INVOICE DEMANDING PAY-
MENT IS TO BE ATTACHED*

*(Under Rule 5 of the Insolvency and Bankruptcy (Application to
Adjudicating Authority) Rules, 2016)*

Date: 31 May 2022

*To,
KLSR Infratech Limited
CIN: U45400TG2011PLC072158
H.No: 2-56/D/213/9A & 9B, F No. 4B, KLSR Towers, Ayyappa
Society, Madhapur, Hyderabad, Telangana-500081*

*From,
A.S. Met Corp Private Limited*

CIN: U74900TG2014PTC096666 Flat No 501, Vishal's Srinivasa Krupa Apts, Adj to Manasarovar Heights, Rte Colony, Hasmathpet Hyderabad – 500009

Subject: Notice attached to invoice demanding payment

Madam/Sir,

M/s. A.S. Met Corp Private Limited, hereby provides notice for repayment of the unpaid amount of Rs. 3,79,06,143/- (Principal - Rs. 2,72,29,416/-, Interest - Rs. 38,69,370/-, Penalty -Rs.68,07,357) (Three Crores Seventy Nine Lakhs Six Thousand One Hundred and Forty Three Rupees Only) that is in default as reflected in the invoices attached to this notice. Copy of Invoices along with demand calculation sheet are enclosed as Annexure-1.

In the event you do not repay the debt due to us within ten days of receipt of this notice, we may file an application before the Adjudicating Authority for initiating a Corporate Insolvency Resolution Process under section 9 of the Code.

Yours sincerely,

For A.S. Met Corp Private Limited

*Phani Shanker Kuppa
Director
DIN: 08001990
Flat No 501, Vishal's Srinivasa Krupa Apts,
Adj to Manasarovar Heights, Rtc Colony,
Hasmathpet Hyderabad – 500009”*

32. The demand notice was accompanied by 15 invoices total claim being Rs.379,86,143/-. The list of 15 invoices enclosed alongwith the demand notice indicate that date of invoices were between 09.07.2021 to 01.12.2021 along with invoice number, invoice amount due date of invoices and date of invoice taken and invoice amount due with interest

and total. The demand notice was received by corporate debtor by e-mail on 14.06.2022. It is useful to notice the entire reply to demand notice by letter dated 15.06.2022 which is as follows:-

“Date: 15-06-2022

To

A.S.MET CORP PVT LTD

CIN: U74900YG2014PTC096666

Plot No.85, Road No.2. Vahini Nagar.

Sikh Village, Secunderabad-500 055

Sir/Madam,

Subject: Reply to demand notice in Form-4 under Insolvency & Bankruptcy Code, 2016 dated 31 May 2022 received through email on 14th June 2022

With reference to the notice issued in Form-4 under Insolvency & Bankruptcy Code, 2016 from your company A.S.MET CORP PVT LTD, we hereby submit the following-

-Our Company is having turnover of around Rs.400 Crores and we purchase materials for more than Rs.200-250Cr\$ per year from various big companies across India. We have been making payments to all our vendors without fail during our 25 years of business.

-In the month of December 2021, our company came to know that fraud has happened at our factory amounting to crores of rupees by vendors/clients of steel strapping material by colluding with our employees. Hence, the company started detailed investigation on the activity and a detailed audit is going on from 22.12.2021 onwards by holding the entire process at factory.

-We have verified the official email id through which the persons involved in this activity communicated to vendors and clients but we did not find either requisition made to

vendors for procurement of raw material or orders received from the clients. Hence, we stopped the entire activity from the last week of December 2021 itself.

-As the material involved is steel there will be variation in quantity in every consignment. However, payments were made to you for 100% of invoice value without any reduction as per the weight because of which only we got the doubt that fraud has happened. Therefore, it is clearly evident that our employees had colluded with your company and other vendors.

-Further, we also got some communication from banks regarding the LCs which were paid, that some of the vehicle numbers mentioned by you are fake and they had insisted for clarification regarding how the material was received without a valid vehicle. Hence, we started investigation on the said activity.

-As per our records, there are no invoices which are due to be paid by you earlier to December 2021.

-The LCs which were issued by us were utilized by you against your invoices of December 2021. If at all there were pending invoices earlier to said date, you would have claimed for the same before claiming for latest invoices which you have not done. This clearly explains that there were no old pending invoices earlier to said date. As a general practice any vendor would insist for clearing previous invoices before clearing the latest invoice. But, in this case you had cleared latest invoices and suddenly brought old dated invoices into picture and claimed for the same which is suspect-full in nature.

-We also came to know that your company and other companies i.e., VVR Industries, Wisdom Ergotech India LLP, Sunray Metallurgical Industries Private Limited etc., were also involved in diversion of funds by colluding with our

employees. We are having strong evidences and the same will be submitted in an appropriate time.

-As part of investigation, our team tried to collect statement of ledger accounts from each and every vendor and customer. Out of which, some were received and still many are yet to be received.

-Upon your approach, we had already brought to your notice that a detailed investigation audit is going on against the fraud occurred and also informed you that there are so many fake invoices which we had come across in your case. Further, we have to receive payment from your company against the material supplied also. We also came to know that some of the material was returned to you by our employees who were colluded with you without any waybill, invoice or delivery challans.

-While investigating each and every transaction, we came to know that so much quantity was not received actually and the invoices were raised by you and other vendors by colluding with our employees. There are several instances where we found that fictitious invoices were raised without supply of material. There is huge variation in quantity of purchases and sales.

-We are having strong supporting evidences to prove how fictitious invoices were raised without supply of material by your company and how you are involved in this fraud by colluding with our employees. We also came to know that your official Mr.Piyush Pravinchandra Mehta had colluded with our employees and taken supplies of our materials in the name of other related companies in which your directors are the directors along with him and payments are not received to us so far against those supplies.

-We had informed our employees who had executed the said activity and who are involved in this fraud to provide

complete details and clarifications for those fictitious transactions. They had requested us some time to provide detailed clarifications and also to bring the other employees who are absconding and non-traceable as they were also involved in this fraud along with the current employees. We are also going to initiate necessary legal action against all the persons involved in this fraud amounting to crores of rupees. Further, we are also going to file petitions with revenue departments also regarding fictitious invoices and also to get vehicle tracking.

-We also came to know that the invoices for which we had already made payments are also fictitious invoices. We are investigating into this matter in depth and we will claim the respective amounts from you along with all supporting evidences which will be produced at appropriate time.

-As you are aware that the fraud has happened in which you are also involved, your company is approaching us through our official email id accounts@klsrinfratech.com to which no earlier communication was made. Moreover, there is no official communication either with respect to orders placed or quotations availed.

At prima-facie we found that your company along with other companies like Bengal Cold Rollers Pvt Ltd. VVR Industries, Suprabha Protective Products Pvt Ltd etc., are involved in this fraud by colluding with some of our employees working for our factory. There are several instances where we found that no goods were delivered under the invoices and we will furnish complete details as and when needed at an appropriate time. Therefore, the amount which was claimed by you in your notice is not legitimate, hence the charges mentioned by you does not arise and are not valid. The invoices whatever enclosed along with this notice are fraud and

raised without supply of material by colluding with our employees.

Therefore, we are disputing the demand made by you and you have to file proof for the delivery of the said goods along with worth of the goods. The demand notice issued under the various invoices were not furnished earlier and for the first time you have furnished along with this notice. In fact, we have not received the material as mentioned in the invoices. Therefore, we are not liable to pay the amount as demanded by you in the said notice. You are advised to withdraw the said notice or else we will take necessary legal action including filing a criminal complaint against you for cheating, dishonest intention and forgery. In such an event you will only be held liable for all costs and consequences. Please take reply notice.”

33. From the above reply to the Demand Notice, the following reasons were mentioned by the CD for denying any liabilities towards payment of dues claimed by the OC in its Demand Notice dated 31.05.2022:

- (i) In December 2021, the CD came to know that fraud has happened at CD's factory amounting of crores of rupees by vendors/ clients of steel strapping material by colluding with employees of the CD. Hence, the CD started detailed investigation on the activities and a detailed audit is going on from 22.12.2021 onwards by holding the entire process at factory.
- (ii) The CD got communication from Banks regarding LCs which were paid, that some of the vehicle numbers mentioned by OC are fake and Bank had insisted for clarification regarding

how the material was received without a valid vehicle, on which investigation started regarding the said activity.

- (iii) As per record of the CD, there were no invoices which were due to be paid to OC prior to December 2021. The LCs, which were issued by the CD were utilized by the OC against invoices of December 2021. If at all there were pending invoices earlier to the said date, the OC would have claimed for the same before claiming for the latest invoices, which the OC has not done. This clearly explains that there were no old pending invoices earlier to the said date. As a general practice any vendor would insist for clearing previous invoices before clearing the latest invoice. But, in this case the OC had cleared latest invoices and suddenly brought old dated invoices into picture and claimed for the same which is suspicious in nature.
- (iv) The CD has already brought to the notice of the OC that a detailed investigation and audit is going on against the fraud occurred and also informed the OC that there are so many fake invoices, which CD came across in OC's case. Further, the CD has to receive payment from the OC against the material supplied also. The CD has also come to know that some of the materials were returned to CD by the CD's employees, who colluded with OC without any waybill, invoice or delivery challans. There are several instances where the

CD found that fictitious invoices were raised without supply of materials. The CD has strong supporting evidence to provide how fictitious invoices were raised without supply of material by OC and how OC is involved in this fraud by colluding with employees of the CD. The CD is also going to initiate necessary legal action against all the persons involved in this fraud amounting to crores of rupees. Further, the CD is also going to file petition with Revenue Department also regarding fictitious invoices and also to get vehicle tracking.

- (v) The CD also came to know that the invoices for which the CD had already made the payments are also fictitious invoices. The CD is investigating the matter in depth and it will claim the respective amount from the OC along with all supporting evidence, which will be produced at appropriate time.
- (vi) The OC is approaching the CD through its official email account@klsrinftratech.com to which no earlier communication was made. Moreover, there is no official communication either with respect to orders placed or quotations availed.

34. It is submitted by the CD that on receipt of audit report, the CD came to know that the following persons had joined hands with the OC, VVR Industries Ltd and Suprabha Protective Products Limited to come with false claims under fabricated invoices without, in fact, supplying raw materials:

- Allu Nagesh
- Kanakamedala Siva Krishna
- Madhu Mohan Reddy
- Morisetty Jagadish
- K. Suresh Babu.

35. The CD filed FIR No.539 of 2022 with SHO, Jeedimetla under sections 420 & 406 (of IPC). The case was transferred to Economic Offence Wing, Cyberabad. During the course of investigation the authorities filed a petition with Economic Offence Wing, Cyberabad seeking permission from the learned VIII Additional Metropolitan Magistrate to add sections 409, 468, 471, 467, 381, 120B r/w 109 of IPC in above said FIR in addition to section 406 and 420.

36. The questions, which are brought for consideration are as to whether the defence, which was raised by the CD in above reply to Demand Notice:

- (i) Is spurious, hypothetical or illusory?
- (ii) Whether there is plausible contention, which required further investigation?
- (iii) The dispute is not patently feeble, legal argument or assertion of facts unsupported by evidence?

37. As noted above, the Adjudicating Authority in the impugned order has held that the defence raised by the CD and the plea of pre-existing dispute as to the operational debt is spurious and moonshine defence. In Paragraph XLIV, following has been observed by the Adjudicating Authority:

“**XLIV** Therefore in the light of our discussion as above and considering the submissions made by the learned PCS for the petitioner and the learned senior counsel for the respondent, we are satisfied that the petitioner has established existence of operational debt of a sum over Rs. One crore due and payable by the respondent and its non-payment. We are also fully satisfied that the plea of pre-existing dispute as to the operational debt is spurious and moonshine defence.”

38. The Adjudicating Authority under the heading ‘Finding’ in the impugned order has given reasons for rejecting the defence raised by the Appellant. The Adjudicating Authority on question whether the documentary evidence furnished with the application shows that the operational debt of a sum over rupees one crore, has returned a finding that the OC has been able to prove the debt by giving following reasons:

- (i) Contention of the OC that the CD had claimed credit input pursuant to filing GST R1 by the OC is not disputed by the Respondent. When it is the case of the OC that supplies under the invoices were genuinely made after paying GST, accompanied by e-way bills and delivery challans, the least that is expected from the CD, which is disputing these invoices is to exercise its statutory right of raising a dispute before the Authorities under the GST Act, stating that the said invoices are fake by submitting GST R-3, so that the genuineness of the subject invoices are to be decided.

- (ii) The debt acknowledgment letter dated 15.03.2022 and the affidavit of undertaking to pay the outstanding debt, which remain undisputed until the reply notice dated 15.06.2022.
- (iii) The CD has made payment to OC post December 2021, without any demur.

39. We need to examine as to whether the above reasons given by the Adjudicating Authority to hold existence of operational debt are sustainable.

40. Coming to the first reason that the contention of the OC that CD had claimed credit input pursuant to filing GST R1 by the OC is not disputed by the Respondent. We need to notice the relevant pleas made by the OC in its Part-IV of Section 9 petition regarding the above. In Part-IV in Paragraph (l), following was pleaded by the OC:

“(l) The Operational Creditor had also paid the GST on the said invoices to the Government and filed the returns in this regard. The copy of e-way bills along with GST returns evidencing the delivery of goods and payment of GST is enclosed as Annexure-8”

41. When we look into Section 9 petition, which is part of the record of the Appeal filed as Annexure-2, the only statement which has been made by the OC is that the OC has paid GST on the invoices to the Government and filed return in that regard. There was no pleading by OC that CD has taken any input credit of the GST. The Adjudicating Authority while returning finding in Paragraph XXIII, has observed following:

“**XXIII.** Indisputably, in respect of the invoices under which payment has been claimed by the petitioner/operational creditor, the receipt of which has been acknowledged by the respondent, GST has been paid by the petitioner on all these invoices. That apart, part payment in respect of some of these invoices has even

been made by the respondent through prearrangement of LCs, post claim of audit of the records by the respondent. The Petitioner also enclosed e way bills in respect the goods supplied under the said invoices. The contention of the Petitioner that the respondent had claimed credit input pursuant to filing GST R1 by the Petitioner/operational creditor, is not disputed by the respondent.”

42. When there was no pleading in Section 9 petition that CD has taken input credit pursuant to filing of GST R1 by OC, there is no question of any denial by the CD before the Adjudicating Authority. Learned Counsel for the Respondent had submitted that in the written submission, which was filed before the Adjudicating Authority, a submission was raised by Respondent No.1 that CD has taken input credit. We are of the view that Adjudicating Authority has unduly drawn adverse inference against the CD and observation of the Adjudicating Authority that CD has not disputed the claim of input credit, is wholly erroneous. The learned Counsel for the Appellant has submitted before us that the CD has never taken input credit with respect to invoices in question. Learned Counsel for the Appellant elaborating his submissions contended that it was pleaded by the CD before the Adjudicating Authority that 14 invoices on the basis of which petition under Section 9 was filed were never earlier sent to the CD and it was only through Demand Notice for the first time, a claim had been made. Learned Counsel for the Respondent relying on various returns, which were brought on record along with IA No.1397 of 2026 sought to contend that the said return clearly proves input credit was reflected in the returns filed by the OC, which was utilized by the CD. Learned Counsel for the Appellant has contended relying on its counter affidavit filed to IA No.1397 of 2026, referred to Paragraphs 5 and 6, which are as follows:

“5. It is further submitted that the Operational Creditor has deliberately avoided placing on record the correct annual returns for FY 2021-22 because the same would clearly demonstrate that the Corporate Debtor did not avail Input Tax Credit in respect of the invoices now relied upon. The selective reliance on an entirely different financial year is a calculated act intended to create a false impression before this Hon'ble Tribunal that ITC was availed, when in fact no such ITC was ever claimed or utilised by the Corporate Debtor.

6. Without prejudice to the above, even the alleged ITC comparison statement relied upon by the Operational Creditor is technically incorrect. The comparison has been made between GSTR-2B and GSTR-3B, while completely ignoring GSTR-2A. It is settled under GST law that

- GSTR-2B is a static, auto-generated statement which reflects only those invoices uploaded by suppliers within a particular cut-off date and does not update retrospectively.
- In contrast, GSTR-2A is a dynamic statement which continuously updates and reflects all invoices uploaded by suppliers, including belated filings and amendments. Instead, it is an auto-populated statement generated in the GST portal. The GSTR 2A is not a return that taxpayer files rather it's a auto-populated statement, meaning is that it serves as a reference document for taxpayers to verify the ITC they are eligible to claim based on their suppliers' declarations.
- GSTR-3B is a monthly return filed by tax-payer, tax-payers report their tax liability and claim Input Tax Credit for a given tax period. This alone reflects the actual ITC availed by the registered person.

Therefore, any allegation of wrongful ITC availment can be examined only by comparing GSTR-2A with GSTR-3B. A comparison between GSTR-2B and ITC carried forward and reconciled in the correct financial year. A copy of the Annual Return and Reconciliation Statement i.e. GSTR-9 and GSTR-9C of FY 2021-2022 along with GSTR 2A is attached and marked as ANNEXURE-1 (Colly.).”

43. For the purposes of the present case, we need not ponder with respect to above submissions of the parties any further.

44. As noted above, the OC before the Adjudicating Authority has not claimed in Section 9 petition that CD has taken input credit on GST paid by the OC on the invoices in question. There was no occasion for the CD to make any pleading or rely on any material before the Adjudicating Authority on the above question. Moreso, mere payment of GST by OC on the invoices in question shall not make the invoices unquestionable and payment of GST cannot lead to mean that transaction is beyond the shadow of any controversy. As noted above, the GST Authorities assessed the OC for the Financial Year 2021-22, which assessment order has been brought on record, which assessment shall be noticed by us hereinafter.

45. The Adjudicating Authority has relied on debt acknowledgement letter dated 15.03.2022 and affidavit of undertaking to pay the outstanding, which conclusion has been recorded in Paragraph XXV of the impugned order. The debt acknowledgment dated 15.03.2022 is an affidavit by one Mr. Allu Nagesh, a Director of the CD, which affidavit was part of Section 9 petition as Annexure-1. The affidavit was sworn on stamp paper sold to Piyush Mehta of the OC, who has signed all invoices on behalf of the OC. The affidavit given by Mr. Allu Nagesh reads as follows:

“AFFIDAVIT

1. I, ALLU NAGESH S/O ALLU RAMA RAO, AGED ABOUT 52 YEARS, am DIRECTOR OF M/S KLS R Infratech Limited. A Company incorporated under companies Act 1956. Having its registered office at H.No 2-56/D/213/9A & 9B, F. No 4B, KLSR TOWERS, AYYAPPA SOCIETY, MADHAPUR,

HYDERABAD TELANGANA 500 081, I do hereby sincerely affirm and State under oath as follows.

2. I am THE DEPONENT herein, and hence well acquainted with the facts of the Matter Deposed hereunder.
3. That, in pursuance of management of day to day affairs of the company's Manufacturing Facility at Plot No 4C, Phase IV extn, IDA Jeedimetla, Hyderabad 500 055., The Company had placed Orders for Supply of Raw material Which Is CR STRIPS/CRFH Strips/CR COILS, on Our Esteemed Supplier, M/s A S METCORP PRIVATE LIMITED. A company registered under Companies Act 1956, having its Administrative office at Plot No 85, Road No 2 Vahini Nagar, Sikh Village, Secunderabad 500 009, and Stockyard at No: 7-583/B, Pipeline Road, Subhash Nagar IDA Jeedimetla, Hyderabad 500 055.
- 3 M/s AS METCORP PRIVATE LIMITED Had Supplied CR STRIPS/COILS, being input for manufacturing of Steel Strapping Strips, based on Orders given time to time from our end.
- 4 The Goods received from M/s A S METCORP PRIVATE LIMITED were in Order, both in terms of Quality and Quantity.
- 5 That, M/s KLSR Infratech Limited. Is due and payable a sum of Rs.2,88,79,417.00. (Rupees Two Hundred and Eighty Eight Lakhs, Seventy Nine Thousand Four Hundred and Seventeen Only) to M/S A S METCORP PRIVATE Limited as on this date. Being Consideration towards said Supplies of CRFH STRIPS/CR STRIPS/CR COILS.
- 6 That, Since the Supplies are executed by M/s AS METCORP PRIVATE LIMITED, to M/s. KLS R Infratech Limited. During OCTOBER 2021 and NOVEMBER 2021 and the Considerations towards these supplies remain unpaid till date are delayed abnormally, Hence, M/s KLSR Infratech Limited is also liable to pay Interest on Delayed payments at mutually agreed rate, and Penal Charges on the amounts due and payable.
- 7 That this AFFIDAVIT is being Executed and Signed by me voluntarily, out of my own free will, and without any Coercion.

Sworn and Signed under Witness on this the 15th March 2022, at Jeedimetla Hyderabad.”

46. The CD in its reply to Demand Notice dated 15.06.2022 has already communicated to the OC that a fraud has been committed in factory of the CD by vendors in collusion with certain employees of the CD and investigation and audit has commenced on 22.12.2021. It is further

relevant to notice that the FIR which has been lodged by the CD against some of its employees, also included Mr. Allu Nagesh, the person who has given affidavit in favour of the OC along with officials of the OC. Mr. Allu Nagesh and other officers of the CD and OC were arrested and chargesheets were filed against them. Thus, the affidavit which is relied by the OC in Section 9 petition is an affidavit obtained from a Director of the CD against whom collusion has been alleged. When we look into the contents of the affidavit as noted above, it is clear that the said affidavit is not issued in normal course as an acknowledgment by the CD. Learned Counsel for the Respondent in his submissions has candidly admitted that the said affidavit was procured by OC. The affidavit cannot be treated to be an acknowledgment by the CD in the facts and circumstances as mentioned above and cannot be made basis to return a finding that OC has successfully proved the debt.

47. Now we come to the third reason given by the Adjudicating Authority in the impugned order, on the basis of which the Adjudicating Authority has held that the defence raised by the CD is spurious and moonshine defence. While considering Point No.2, Adjudicating Authority has held that CD admittedly made part payments in respect of some of the invoices, without any demur which are now being termed as fake, post December 2021, which finding has been returned in Paragraph XLII. It was contended before the Adjudicating Authority that an amount of Rs.92,01,161/- was received on 20.12.2021 in respect of outstanding Invoice bearing No.GST/21-22/0250 and GST/21-22/0251, which is reflected in the ledger of the OC brought on record. The payment on

which reliance is placed of Rs.92,01,161/- by the OC is payment made on 18.03.2022. Payment on 18.03.2022 as explained by the Appellant was payment by the CD to its Bank against the LC, which was issued by the Bank to the supplier, which Bank had already made the payment by discounting the invoices and the CD was liable to make payment to its Bank for the Letter of Credit, under which the Bank has paid the amount to the supplier. The payment made by CD on 18.03.2022 was to its Bank against Letter of Credit, cannot be said to be payment made by the CD to the OC and observation of the Adjudicating Authority that CD had made part payment in respect of some of invoices without any demur, which are now being termed as fake, post December 2021, are wholly erroneous and incorrect.

48. No payment was made by the CD to the OC after December 2021 is proved from own ledger of the OC, which was filed by the OC along with Section 9 application. In Part-V of Section 9 application at Item No.8, i.e. Paragraph-4, following has been pleaded by OC:

“4) Copy of Ledger Account of the Respondent (KLSR Infratech Limited) acknowledging the amount due in their books- Annexure-14”

49. When we look into the Annexure-14, which is at Page 326 of paper book, it is a letter written by OC to CD dated 31.03.2022 on the subject ‘Account Balance Confirmation’. Letter dated 31.03.2022 reads as follows:

“AS METCORP PVT LTD.
Off: Plot No:85, Road No:2
Vahini Nagar, Sikh Village

Secunderabad 500 009
Telangana State
GSTN: 36 AANCA 0729 N 12B
CIN: U74900TG2014PTC096666.
Email: ****com.in
Mobile 91-4392588825

Date: 31.03.2022

To,
M/s KLSR INFRATECH LIMITED.
H.No 2-56/0/213/9A & 9B, Flat No 48
KLSR Towers, Ayyappa Society, Madhapur
Hyderabad 500 081.

Sir/Madam,

Sub: Account Balance Confirmation or 3200)

This is to inform you that, you were due to our Company a sum of Rs.2,88,79,419.94, (Rupees Two Hundred and Eighty Eight Lakhs Seventy Nine Thousand Four Hundred and Nineteen Paise Ninety Four Only) as on 31 March 2022.

Request you to confirm the above balance, by way of acknowledgement of this Letter and the Ledger Extracts appended herewith.

In case your records are not in full agreement with the Ledger Extracts attached herewith, please provide us with the details shown in your records along with outstanding balance as on 31 March 2022.

For A S METCORP PVT LTD.

Sd/-
(AUTHORISED SIGNATORY).

We acknowledge that The LEDGER EXTRACTS Provided are in consonance with our records, and also Confirm the Balance Due to You is Rs. 2,88,79,419,94 from M/s KLSR Infratech Limited as on 31 March 2022 tallies with our records.

For KLSR Infratech Limited.

Encl.- Ledger Extracts
from 1 April 202-1
to 31 March 2022

Sd/-
(Authorised Signatory).

50. The above letter is said to be acknowledged on behalf of the M/s KLSR Infratech Ltd. Learned Counsel for the Appellant has submitted that letter was never received by the CD and the said acknowledgement

was obtained through Mr. Allu Nagesh, erstwhile Director of the CD, who colluded with OC and other suppliers against whom criminal prosecution has already been initiated and has been chargesheeted. The relevant part, which we need to notice from the ledger extract from 1st April, 2021 to 31st March, 2022, which was enclosure of the letter. In the ledger from 1st April, 2021 to 31st March, 2022, the first entry is of 16.04.2021 and last entry in the ledger is of 20.12.2021. It is useful to notice the relevant extract of ledger (i.e. only first entry and the last entry), which is as follows:

"Date	Particulars	Vch Type	Vch No.	Debit	Credit
16-Apr-21 Cr	Sales @ 18%	GST SALES	GST/21-22/0007	6,52,496.00	
20-Dec-21 Cr	Sales @ 18%	GST SALES	GST/21-22/0250	30,06,687.00	
Cr	Sales @ 18%	GST SALES	GST/21-22/0251	30,02,014.00	
Cr	Sales @ 18%	GST SALES	GST/21-22/0252	30,03,572.00	
Cr	INTEREST ON LC USANCE SHINHAN BAN	Debit Note	32	1,88,888.00"	

51. When the ledger extracts submitted by the OC before the Adjudicating Authority, which ledger is claimed from 1st April, 2021 to 31st March, 2022, has shown the last payment only on 20.12.2021, the ledger of the OC, itself proves that the CD never made any payment subsequent to 20.12.2021. Payment made on 20.12.2021 has been claimed by the CD in its ledger. However, the CD has categorically pleaded and proved that no payments were made by the CD after 20.12.2021. We have already noticed the payment of Rs.92 lakhs by the

CD to its Banks against the LCs, which were opened by the Bank to the suppliers. We have already held that payments made by the CD on 18.03.2022 to its Bank was towards payment of LCs, which payments were to be cleared by the CD against the LCs, which cannot be said to be payment by the CD to OC. Payment by CD to OC was made only on 20.12.2021 against which payment the CD was obliged to pay the Bank, the amount paid against the LCs along with interest. It is, thus, fully proved from the materials on record that no payments were made by the CD to the OC after 20.12.2021 and Adjudicating Authority's finding and observation that the payments were made by the CD to the OC even after December 2021 without any demur, is erroneous and against the record.

52. The observation of the Adjudicating Authority that post December 2021 part payments made by the CD to the OC is incorrect and is not borne from record. Thus, the above reason also given by the Adjudicating Authority for rejecting the defence of the CD as spurious and moonshine defence, is clearly unsustainable.

53. The observation of the Adjudicating Authority that the plea of pre-existing dispute which the CD is trying to cull out from reply notice dated 15.06.2022 is a feeble contention, on the finding that payments were made by the CD to OC post December 2021. It is useful to notice following observation of the Adjudicating Authority in Paragraph XLII, which is as follows:

“XLII In so far as, placing reliance on the FIRs and police reports in the proceedings under section 9 of IB Code are concerned, Hon'ble NCLAT, in Subhash Chand Gupta vs Bhavesh Texo Fab Inita Limited & Anr (Company Appeal (AT) Insolvency No. 816 of 2022) which is as below,

“13. We are of the view that Appellant cannot take any benefit of Criminal Proceedings initiated by the Appellant by filing an Application under Section 156 of the Cr. PC which proceedings were initiated subsequent to receipt of Demand Notice. Application under Section 9 was to be considered and decided on the basis of material which was brought by the Operational Creditor with regard to its debt and default and the Adjudicating Authority being satisfied that there is debt which remained unpaid, no error has been committed by the Adjudicating Authority in admitting Section 9 Application.”

Therefore, from discussions afore-mentioned, it is clear that, dehors the FIR dated 30.06.2022 and the police investigation reports, the only other material available to trace the plea of “pre-existing dispute” is the reply notice dated 15.06.2022 to the demand notice. In our discussion in the preceding paragraphs we have clearly held that the plea of pre-existing dispute which the Respondent is trying to callout from reply notice dated 15.06.2022 is a feeble contention, in as much as having taken the stand in the said reply notice that audit of the subject invoices has been ordered by December 2021 regarding the subject invoices, the Respondent admittedly made part payments in respect of some of the invoices, without any demur which are now being termed as fake, post December 2021.”

54. We have already noticed the various detailed pleas raised by the CD in its reply to Demand Notice dated 15.06.2022. The facts which were mentioned by the CD in the reply to Demand Notice of 15.06.2022 relate to the facts which transpired in December 2021. The CD has initiated internal audit in December 2021, which is borne out from the material on record. From 22.12.2021, all supplies were stopped including the payments. The fact that no payments were made after December 2021 by the CD to the OC clearly proves that issues between the parties regarding claim under invoices had arisen in December 2021 itself. Thus, the very basis of foundation of order of Adjudicating Authority that post December 2021 the CD has made payment to the OC is fallacious and against the record.

55. Learned Counsel for the Respondent has contended that the invoices which were claimed by the CD as fake and fictitious invoices are issues, which are beyond the remit of Adjudicating Authority in adjudication under Section 9. From the replies to Demand Notice and Section 9 petition, it is apparent that CD's defence was not only confined to alleging fictitious invoices and invoices with respect to which no goods were supplied, rather there were other pleas, which were borne out from the record, which clearly proves that defence raised by the CD, cannot be said to be untenable, spurious and moonshine. We need to refer to few parts of the reply to Demand Notice and reply to Section 9 petition in the above context. One of the pleas raised by the CD in reply to Demand Notice is that certain materials were returned to OC by employees of the CD. In reply to Section 9 petition, it was specifically pleaded that materials against Invoice Nos.227, 228 and 229 were returned. In Section 9 petition, Invoice Nos.227, 228 and 229, which are tabulated under Part-V under (i) at Sl. No.11 to 14. The email dated 14.02.2022 is on the record, which was sent on behalf of the OC, which was filed along with the counter affidavit by the CD to Section 9 petition. The email dated 14.02.2022 reads as follows:

SOA -AS MET CORP PVT LTD

Venkat J jvenkat555@gmail.com Mon Feb 14, 2022 at 8:17 PM
To: marketing@kisirinftratech.com

Dear Madam CA Pavani,

I refer to your email request for our ledgers of AS METCORP PVT LTO, please find attached to this mail, the ledger extracts, kindly note that in case of invoice numbers 227 228,229 purportedly the goods have been rejected and received back, however no delivery

challan and e-way bills have been received in confirmation of such actions, hence they appear accounted

Thanks & Regards

Venkat Narayana J
Accounts Incharge
AS MET CORP PVT LTD”

56. Thus, the defence taken in the reply to Demand Notice is that certain materials have been returned to the OC and OC claiming outstanding dues of the said materials specifically the Invoice Nos.227, 228 and 229 was thus clearly proves the case of the CD and observation of the Adjudicating Authority to the defence taken by the CD is a moonshine defence unsupportable by any evidence, has to be rejected. The defence was fully proved and the Adjudicating Authority without advertng to relevant materials on record, jumped to an erroneous conclusion that defence raised by the CD is spurious and moonshine.

57. In the reply to Section 9 petition, with respect to 15 invoices claimed by the OC, all details in tabular form were given and explained. Learned Counsel for the Appellant has also contended that invoices were attached and claimed as duplicate invoices, fictitious invoices without supplying any materials. Another group of invoices, which has been referred to by the Appellant, are the invoices, for which according to the Appellant amounts had been fully paid. Reference has been made to the Invoice Nos.92, 124 and 127. When we look into the counter affidavit filed by the CD to Section 9 petition, there have been detailed explanation and reply with respect to all 15 invoices, which have not been adverted by the Adjudicating Authority and without advertng to the pleas raised by the CD in its reply, the Adjudicating Authority has jumped to the

conclusion that defence is spurious and moonshine. It is also relevant to notice that Adjudicating Authority itself in the impugned order has rejected the plea raised by the OC that pre-existing dispute, cannot be raised in reply to Section 9 application. Rather, the Adjudicating Authority held that the CD can raise such dispute in reply/ counter affidavit. We may notice observation of the Adjudicating Authority in Paragraph 35, which is as follows:

“**XXXV** Having heard the Ld. PCS for Petitioner and the Ld. Sr. Counsel for the respondent, and on careful perusal of the record, at the outset, we state that there is no bar under the law that merely because the Corporate Debtor failed to raise the dispute before the receipt of the demand notice, he shall not raise such dispute in the reply/ counter. Reliance, in this regard, can be placed on the ruling of the Hon’ble NCLAT, in the matter of M/s Brand Realty Services Limited Vs. Sir John Bakeries India Pvt Ltd., in CA (AT) (Insolvency) No. 958 of 2020, wherein it has been held as follows:

“The statutory scheme under Section 8 and 9 does not indicate that in an event Reply to Notice is not filed within 10 days by Corporate Debtor or no Reply to Notice under Section 8(1) have been given, the Corporate Debtor is precluded from raising the question of dispute.” “Further in Reply to Section 9 Corporate Debtor can bring the material to indicate that there are pre-existing disputes in existence prior to issuance of demand notice under Section 8. We thus are of the considered opinion that mere fact that Reply to notice under Section 8 (1) having not been given within 10 days or no reply to demand notice having been filed by the Corporate Debtor does not preclude the Corporate Debtor to bring relevant materials before the Adjudicating Authority to establish that there are pre-existing dispute which may lead to the rejection of Section 9 application. In the above context, we may refer to Judgement of this Tribunal in

“Neeraj Jain Vs. Cloudwalker Streaming Technologies Private Limited” (Company Appeal (AT) Ins. No. 1354 of 2019) decided on 24th February, 2020 in paragraph 50 following observations have been made by this Tribunal: “...Even otherwise, mere failure to reply to the demand notice does not extinguish the rights of the Operational Creditor to show the existence of a preexisting dispute...” We thus set aside the Impugned Order and remit the matter back to the Adjudicating Authority to consider the Application afresh.”

58. The Adjudicating Authority, thus, was well aware that the reply given in Section 9 petition has also to be looked into for finding of pre-existing dispute. From the materials brought on record, it is, thus, clear that facts and events, which transpired prior to issuance of Demand Notice were in existence, which clearly support the submission of the Appellant that from 22.12.2021, internal audit was commenced by the CD, after finding large number of fraud committed by the vendors in collusion with some employees of the CD and all procurement was stopped from 22.12.2021, which was clearly mentioned in the reply to Demand Notice dated 15.06.2022. We have also noticed the email dated 14.02.2022 by which certain goods, which were sent by Invoice No.227, 228 and 229 were returned to the OC, which was admitted by email dated 14.02.2022 as noted above, which was an event much prior to issue of Demand Notice. When the OC has claimed outstanding out of the said three Invoice Nos.227, 228 and 229 in its Demand Notice and Section 9 petition, the defence raised by the CD that materials were returned, cannot be said to be without support of any material and was very well a pre-existing dispute.

59. In view of the foregoing discussions, we do not subscribe to the view taken by the Adjudicating Authority rejecting the defence, taken in reply to Demand Notice and counter affidavit on the ground that the defence is spurious and moonshine. A plausible contention was raised by the CD in its reply to Demand Notice within the meaning of Section 9 sub-section 5 (ii) (d).

60. In view of foregoing discussions, we answer Question Nos.(I) and (II) in following manner:

Answer to Question No.(I)	Reply dated 15.06.2022 issued by CD in response to Demand Notice dated 31.05.2022 is notice of dispute within the meaning of Section 9 sub-section (5) of the IBC.
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Answer to Question No.(II)	Defence raised by the CD in reply to Demand Notice dated 15.06.2022 (Notice of dispute) as well as in reply to Section 9 application, cannot be held spurious or moonshine defence and the application under Section 9 was required to be rejected under Section 9 sub-section (5)(ii) (d) of the IBC.
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Question No.(III)

61. As noted above that IA No.7775 of 2025 was filed by the Appellant in Transfer Appeal (AT) No. 1 of 2025 on 10.12.2025, by which the

Appellant prayed to take on record GST assessment order dated 02.07.2025 issued with regard to M/s A.S. Met Corp Pvt. Ltd. for Financial Year 2021-22. The Applicant prayed that said assessment order be taken on record, which application came to be allowed by this Tribunal by our order dated 09.02.2026. The order dated 09.02.2026 is as follows:

“09.02.2026: An I.A. has been filed by the Respondent for placing certain documents on record, which is Form GSTR 9. Learned counsel for the Appellant seeks liberty to file an affidavit in response, which may be done before the next date.

I.A. No.7775/2025: This application has been filed by the Appellant to take on record order dated 02.07.2025 passed by Deputy Commissioner (ST) (FAC), STU-2, Begumpet Division, Hyderabad in the matter of M/s A S Met Corp. Pvt. Ltd. Respondents were allowed time to file objection. Their objection has already been filed. The Respondents – Operational Creditor has been permitted to file documents by our earlier order and today they have filed GST Return, to which time has also been granted to the Appellant to file response.

In view of the aforesaid, the application I.A. No.7775 of 2025 is allowed, the order dated 02.07.2025 is taken on record subject to objections to be taken by the Respondent at the time of hearing.

List this matter on 25.02.2026 at 02:00PM as first case.

Interim order to continue.”

62. The order dated 02.07.2025 is an order issued by Deputy Commissioner (ST)-STU-2 of Commercial Tax Department, where assessment is made of M/s A.S. Met Corp Pvt. Ltd. The assessment order pertaining to GST of OC of the relevant year 2021-22 is relevant with respect to the issues raised in the present Appeal. We need to notice that

Adjudicating Authority has drawn adverse inference against the CD, as to why it has not raised a dispute before GST Authorities with invoices submitted by OC are fake. In Paragraph XXIV, following observation is made by the Adjudicating Authority:

“**XXIV** It is strange that, when it is the case of the Petitioner that the supplies under the invoices were genuinely made after making paying GST, accompanied by e-way bills and the delivery challans, the least that is expected from the respondent which is disputing these invoices is to exercise its statutory right of raising a dispute before the Authorities under the GST, Act stating that the said invoices are fake by submitting GST R-3, so that, the genuineness or otherwise of the subject invoices would have been decided.”

63. The above observation of the Adjudicating Authority has been again reiterated in Paragraph XLI of the order. The Adjudicating Authority observed that “*the least that is expected from the Corporate Debtor which is vehemently disputing the invoices is raising a dispute before GST Authorities by submitting GST R-3 to the authorities, so that the genuineness or otherwise of the subject invoices would have been decided by the competent authorities under the GST Act*”. The Adjudicating Authority itself in the impugned order has drawn adverse inference that CD has not raised dispute before the GST Authorities regarding invoices. In above view of the matter, the assessment made by GST Authorities of the OC of the relevant year is, thus, clearly relevant and has been taken on record in this Appeal by our order dated 09.02.2026 as noted above.

64. Learned Counsel for the Appellant contended that order dated 02.07.2025 passed by GST Authorities was challenged by the OC before the High Court of Telangana in Writ Petition No.29376 of 2025, which

order has been brought on the record in the rejoinder affidavit filed to IA No.7775 of 2025. The said order indicates that the Writ Petition filed by the OC, challenging the order GST order dated 02.07.2025 has been dismissed. Learned Counsel for the Appellant has also brought to the notice of this Tribunal about an attempt made by the OC by filing another Writ Petition No.5144 of 2026 before the Telangana High Court on 19.02.2026, after the order dated 02.07.2025 has been taken on record in this Appeal. In the Writ Petition No.5144 of 2026, whose Memorandum of Writ Petition has been brought on record in the counter affidavit of the Appellant in IA No.1397 of 2026, where OC has made following prayers:

“a. Writ of Mandamus, or any other appropriate Writ, or order, or direction, declaring the impugned Document No. 07/RTI/SHO-EOW/Cyb/2025 dated 29.12.2025, its Annexures and Documents Supplied, as illegal, unconstitutional, without jurisdiction and void ab initio;

b. direct Respondents to recall and withdraw the impugned disclosure;

C. declare that disclosure of the Petitioner's GST Assessment Order under the RTI Act post 13.11.2025 is impermissible and unlawful; and

d. direct that the said document shall not be acted upon, relied upon or given effect to in the proceedings pending before the Hon'ble NCLAT;

e. Order an Investigation By appropriate Law Enforcement Agency in the matter, and consequent prosecution of the Perpetrators and other Culpable Persons;

and to pass such other order or orders as this Hon'ble Court may deems fit just and proper in the circumstances of the case.”

proceedings. The taxpayer's actions suggest a malafide intention to obstruct the investigation. Additionally, a prior report from the enforcement department, which included detailed analysis and investigation, confirmed that these transactions were fraudulent. It is evident that the taxpayer has engaged in substantial fraudulent activities, involving multiple companies, by issuing invoices without the actual receipt or supply of goods.”

67. The assessment order deals with e-way bills data. It was observed in the order that no ITC was claimed by KLSR Infratech Ltd. for various invoices mentioned therein. It is useful to notice following from the order dated 02.07.2025:

“HSN Code: 722112350: Upon examination of the GSTR-2A, e-waybill data, GSTR3B/GSTR-1, it was found that A.S. Met Corp Private Limited had procured the following material against HSN Code 722112350 for the period April-2018 to March-2022. It was found that the total purchases against HSN Code 722112350 are as follows:

S.No.	Name of the Supplier	Amount
1	AAQCS0361P1ZZ / RADIANT PROFILES & STEEL	23,15,925
2	AAFRCR1288M1Z3 / RSAL STEEL PRIVATE LIMITED (Job	2,67,05,088
3	AAECK2226P1ZA / KLSR Infratech Ltd	1,36,61,516
	TOTAL	4,26,82,529

Out of the above e-waybills raised by RSAL Steel Private Limited, there is no vehicle movement for Rs.93,67,776/-. Moreover, A.S. Met Corp Private Limited had raised ewaybills/invoices for an amount of Rs.10,02,04,090/- Out of which the following ewaybills/invoices were raised by A.S. Met Corp Private Limited for which there is no source of procurement of material:

EWB No.	Doc No	Date	Assess Val.	Tax Val.	HSN Code	HSN Desc.	Latest Vehicle No.
171370808348	GST/21-22/0124	28/08/2021	10,88,290.00	1,95,892.20	72112350	CRFH Steel Strips	AP21TT5016
181376260420	GST/21-22/0150	13/09/2021	14,15,150.00	2,54,727.00	72112350	CRFH Steel Strips	AP21TT5016
181376522739	GST/21-22/0151	13/09/2021	7,00,520.00	1,26,093.60	72112350	CRFH Steel Strips	AP21TT5016
151382766939	GST/21-22/0172	29/09/2021	13,93,570.00	2,50,842.60	2112350	CRFH Steel Strips	AP21TT5016
101386725324	GST/21-22/0181	07/10/2021	30,96,720.00	5,57,409.60	72112350	CRFH Steel Strips	AP29TB5577
191386731526	GST/21-22/0183	07/10/2021	26,97,440.00	4,85,539.20	72112350	CRFH STEEL STRIPS	AP29TB5577
111386728892	GST/21-22/0182	07/10/2021	27,71,960.00	4,98,952.80	72112350	CRFH STEEL STRIPS	AP29TB5676
171392981557	GST/21-22/0208	25/10/2021	11,07,220.00	1,99,299.60	72112350	CRFH STEEL COILS	AP21TT5016
181392969949	GST/21-22/0207	25/10/2021	1,42,760.00	25,696.80	72112350	CRFH STEEL COILS	AP28TD1654
101402490054	GST/21-22/0227	20/11/2021	25,00,080.00	4,50,014.40	72112350	CRFH STEEL STRIPS	KA39A0334
101410095065	GST/21-22/0244	09/12/2021	18,26,000.00	3,28,680.00	72112350	CRFH STEEL STRIPS	AP21TT5016

Further, on verification of the ITC claim particulars of KLSR Infratech Limited, it was confirmed that no ITC was claimed by the recipient KLSR Infratech for Invoice Numbers GST/21-22/0181, GST/21-22/0182, GST/21-22/0183, GST/21-22/0207, GST/21-22/0208, GST/21-22/0227, GST/21-22/0244 in their concerned GST returns also. Even the vehicle movement, source of procurement were also not there as explained in the preceding paragraphs. Hence, it is clearly evident that the said transactions were fraudulent and were generated without actual supply of goods.”

68. The GST Assessment Order also dealt with outward supplies of M/s A.S. Met Corp Pvt. Ltd. and found that registration number of the vehicle stated to have been used for transportation of the goods, are found to be non-existent. Details with respect to supplies made by M/s A.S. Met Corp Pvt. Ltd. are mentioned in the order. E-way bills issued with respect to

CD has also been noticed in the order. E-way bills with respect to invoices GST No.21-22/0227; 0114 and 0116 dated 24.08.2021 have also been dealt with, which are the few of the invoices claimed in Section-9 application. It is useful to notice following statement:

“The above e-waybill (Sl.No:12) was generated from A S Met Corp Private Limited, Hyderabad to HST Steels Private Limited, Hyderabad to transport goods within the city of Hyderabad. But vehicle moved out of Telangana by crossing Patancheru, Valsang Toll Plaza, Sawaleshwar Toll Plazas in Maharashtra in different direction. Furthermore, it was found that AS Met Corp Private Limited did not pay GST mentioned in the eway bill for it was indicated as ‘job work’ in the same eway bill. Hence, there was no link between the transaction indicated in the e-waybill, the movement of vehicle actually took place and the amount of tax indicated in the eway bill. It clearly confirms that e-waybill was generated without supply of any goods.

The above e-waybill (Sl.No:21) was generated for Invoice number GST/21-22/0227 - 20/11/2021 from A S Met Corp Private Limited, Hyderabad to KLSR Infratech Limited, Hyderabad to transport goods within the city of Hyderabad. But vehicle moved out of Telangana and Crossed Ainoli toll plaza in Karnataka; Mangalgi Toll Plaza in Andhra Pradesh and Omerga Dakhtiwadi, Talmod, Phulwadi, Sawaleshwar, Varwade, Sardewadi and Patas plaza toll plazas in Maharashtra in different direction. Hence, there was no link between the transaction indicated in the e-waybill, the movement of vehicle actually took place and the amount of tax indicated in the eway bill. It clearly confirms that e-waybill was generated without supply of any goods.

The above e-waybills (Sl.No:29 and 31) were generated from A S Met Corp Private Limited, Hyderabad to KLSR Infratech Limited, Hyderabad for Invoice number GST/21- 22/0181-07/10/2021(e-waybill 101386725324) and GST/21-22/0183-07/10/2021 (e-way bill 111386728892) to transport goods within

the city of Hyderabad. But vehicle movement of the said vehicles on 05.10.2021 to 11.10.2021 is in different direction and was moved from Ghatkesar to Korlapad on 06.10.2021 and no return movement to Hyderabad. Hence, there was no link between the transactions indicated in the e-waybills, the movement of vehicle actually took place and the amount of tax indicated in the e-waybills. Further, it was found that the said invoices are duplicate and replicate of another invoices bearing number GST/21-22/0114 dated 23.08.2021 and GST/21-22/0116 dated 24.08.2021 respectively with same quantity, value, vehicle number also which is clearly discussed in subsequent paragraphs. Further, on verification of the recipient particulars and other details, it was confirmed that no ITC was claimed for the said invoices by the said recipient KLSR Infratech Limited in their GST returns also. It clearly confirms that e-waybill was generated without supply of any goods.”

69. The assessment order clearly found that e-way bills were generated without supply of any goods. With regard to some of the invoices, which are claimed in Section 9 application, it was clearly found in the Assessment Order that invoices were of different date and there was no movement of goods has been established. Following has been observed in the assessment order:

“In the similar manner, A.S. Met Corp Private Limited had raised the following invoices in the name of KLSR Infratech Limited just as duplicate/replicate of other invoice raised on a different date [though there was no movement of goods is established]:

EW B No .	To GSTIN & Name	From Place & Pin	To Place & Pin	EWB No. & Dt.	Doc No. & Dt .	Date	Qty in Ton	Assess Val.	Tax Val .	HSN Code	HSN Desc.	Latest Vehicle No.
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19 13 68 69 59 56	36AAECK 2226P1Z A/ M/S K L S R INFRA TECH LIMITED	Hyde raba d / 5000 55	Hy der ab a d / 50 0 05 5	1913 6869 5956 - 23/08 /2021 18:59 :00	G ST /2 1- 22 /0 11 4	23/ 08/ 20 21	3 3. 6 6 0	30, 96, 720 .00	5,5 7,4 09. 60	72 11 23 50	CRF H Stee l Stri ps	AP2 9TB 557 7
13 13 68 70 64 58	36AAE CK222 6P1ZA / M/S K L S R INFRA TECH LIMITE D	Hyde raba d / 5000 55	HY DE RA BA D / 50 0 05 5	1313 6870 6458 - 23/08 /2021 19:23 :00	G ST /2 1- 22 /0 11 5	23/ 08/ 20 21	3 0. 1 3 0	27, 71, 960 .00	4,9 8,9 52. 80	72 11 23 50	CRF H STE EL STRI PS	AP2 9TB 567 6
12 13 68 86 31 01	36AAE CK222 6P1ZA / M/S K L S R INFRA TECH LIMITE D	Hyde raba d / 5000 55	HY DE RA BA D / 50 0 05 5	1213 6886 3101 - 24/08 /2021 11:30 :00	G ST /2 1- 22 /0 11 6	24/ 08/ 20 21	2 9. 3 2 0	26, 97, 440 .00	4,8 5,5 39. 20	72 11 23 50	CRF H STE EL STRI PS	AP2 9TB 557 7
10 13 86 72 53 24	36AAE CK222 6P1ZA / M/S K L S R INFRA TECH LIMITE D	HYDE RABA D / 5000 55	HY DE RA BA D / 50 00 55	1013 8672 5324 - 08/10 /2021 17:22 :00	G ST /2 1- 22 /018 1	07/ 10/ 20 21	3 3. 6 6 0	30, 96, 720 .00	5,5 7,4 09. 60	72 11 23 50	CRF H STE EL STRI P	AP2 9TB 557 7

11 13 86 72 88 92	36AAE CK222 6P1ZA / M/S K L S R INFRA TECH LIMITE D	HYDE RABA D / 5000 55	HY DE RA BA D / 50 0 05 5	1113 8672 8892 - 08/10 /2021 17:27 :00	G ST /2 1- 22 /0 18 2	07/ 10/ 20 21	3 0. 1 3 0	27, 71, 960 .00	4,9 8,9 52. 80	72 11 23 50	CRF H STE EL STRI PS	AP2 9TB 567 6
19 13 86 73 15 26	36AAE CK222 6P1ZA / M/S K L S R INFRA TECH LIMITE D	HYDE RABA D / 5000 55	HY DE RA BA D / 50 0 05 5	1913 8673 1526 - 08/10 /2021 17:31 :00	G ST /2 1- 22 /0 18 3	07/ 10/ 20 21	2 9. 3 2 0	26, 97, 440 .00	4,8 5,5 39. 20	72 11' 23 50	CRF H STE EL STRI PS	AP2 9TB 557 7

A.S.Met Corp Private Limited had raised Invoices 181, 182 and 183 just as a duplicate/replicate of invoices 114, 115 and 116 with same quantity, rate, value and vehicle number. A.S. Met Corp Private Limited issued invoices numbered 181, 182, and 183 as exact duplicates or replicas of invoices 114, 115, and 116, respectively. These duplicate invoices mirror the same quantity, rate, value, and even the vehicle number. Specifically, invoice number 181 is a duplicate of invoice 114, 182 is a duplicate of 115, and 183 is a duplicate of 116. This duplication of invoices is a clear indication of fraudulent activity, as it is highly improbable for identical transactions, including vehicle details, to occur in this manner.

Achieving identical weights in steel industry for any coil is not at all possible. For instance, if we have acquired 1000 tons of material and need to load 10 tons in each vehicle, the weight of each coil would be different from other coil. There is always a precision gap. Considering that 2 coils are required for 1 ton, the weight of each coil will inevitably vary. Similarly, when loading 10 tons (20 coils) into one vehicle, the weight will differ for every individual vehicle. For instance, one vehicle might have a weight of 10100 kgs, another 10500 kgs, yet another 10250 kgs, and so on, but it will never match any other vehicle. Matching the weight of any vehicle among the 100 vehicles is an impossible task. But in this case, the weight shown in the set of sequential invoices is exactly matching up to the last point i.e., even in kilograms to the weight that is shown in another set of sequential invoices raised after 2 months. Surprisingly even the vehicle number is also not changed, though there is a gap of two months between the two transactions.

However notwithstanding the above, even the vehicle movement was also not there as explained in the preceding paragraphs.”

70. The OC in various invoices and e-way bills has claimed supply of goods through HST Steels Pvt. Ltd. The assessment order found that there are no movement of goods between HST Steels Pvt. Ltd. and M/s A.S. Met Corp Pvt. Ltd.

71. The observations and findings in the assessment order dated 02.07.2025 fully prove the defence taken by the CD in its reply to Demand Notice and reply to Section 9 application, disputing the claim raised by the OC on the basis of 15 invoices, and the case setup by the CD that various invoices were fictitious and were issued without supply of any goods, has found to be proved by the assessment order. Some of the invoices, which are the basis of Section 9 application, have also been dealt with in the assessment order, which clearly supports the case of the CD that several invoices were fictitious, and some were even without supplying the goods. The case set up by the CD in its reply to Demand Notice and the reply to Section 9 application has been proved to be true by the Assessment Order dated 02.07.2025. We, however, at this stage observe that even without referring to the Assessment Order dated 02.07.2025, we have come to the conclusion that defence raised by the CD in its reply to Demand Notice and reply to Section 9 application, were all plausible contentions and the defence taken by the CD was based on relevant materials and cannot be held to be spurious and moonshine. The assessment order, which subsequently came and is taken on record,

fully proves and strengthens the case, which was setup by the CD before the Adjudicating Authority.

72. At this stage, we may also notice the averments made by the CD in Paragraph-1(I) of the reply to Section 9 application, where CD has pleaded following:

“1.(I) I submit that the respondent CD is a Public Limited Company having authorized share capital of Rs. 21,00,00,000/- and a paid up capital of Rs. 20,31,16,000/-. The CD is a company engaged in contracting the works, relating to rural water supply, road works, etc, and had an average annual turnover of over Rs. 300,00,00,000/- (Three hundred crores) in the last five financial years as under:

Year	Turnover (Rs.)	Declared profits
2017-18	4,01,62,49,245	28,22,18,493
2018-19	3,25,64,21,168	25,37,24,145
2019-20	2,46,02,80,220	20,58,48,721
2020-21	2,67,84,18,076	22,67,28,091
2021-22	4,05,02,89,437	39,59,18,441

The company is making continuous profits, as is evident from the aforesaid facts and figures, but not an insolvent company, unable to pay its' debts.”

73. Learned Counsel for the Respondent although contended that there are income tax liabilities against the CD and the bank guarantees have been invoked by the Union Bank of India and other companies against the CD. Suffice it to say that what was pleaded by the CD before the Adjudicating Authority with relevant turnover and declaring its profit clearly proves that company was making continuous profit. Although, the fact that company is making profit and is financially sound, cannot be

sole reason to reject Section 9 application, when a default is committed by the CD. But these facts are relevant facts, while passing an order for putting a company under the CIRP.

74. We answer Question No.(III) in following manner:

Answer to Question GST assessment order dated 02.07.2025 is No.(III) relevant and it supports the case set up by the CD in its reply to Demand Notice dated 15.06.2022 as well as reply to Section 9 application.

75. In result of our foregoing discussions and conclusions, we are of the view that the order passed by the Adjudicating Authority dated 14.07.2023 admitting Section 9 application filed by the OC is wholly erroneous and unsustainable. The facts and sequence of events and the submissions of the Appellant that OC has initiated proceedings under Section 9 not for the purposes of resolution of the CD, but for shielding it from criminal proceedings and putting undue pressure on the CD has substance. Submission of the Appellant has substance in the facts of the present case that the OC is liable to be saddled with exemplary cost for initiating proceedings under Section 9.

76. **IA No.1600 of 2025** – This application has been filed in Company Appeal (AT) (CH) (Ins.) No. 210 of 2023 (Transfer Appeal (AT) No. 1 of 2025) by M/s Bengal Cold Rollers Pvt. Ltd. seeking intervention in the Appeal, where the Applicant is also one of the suppliers of the CD, against whom the CD has already initiated criminal proceedings. The OC being

already party to the Appeal and vehemently contesting the Appeal, we see no reason to permit intervention at the instance of the Applicant.

IA No.1600 of 2025 and all other pending IAs, including various IAs for vacating the interim order passed in the Appeal, stand disposed of.

77. In result, the Appeal is allowed in following terms:

- (1) The impugned order dated 14.07.2023 passed by NCLT, Hyderabad is set aside.
- (2) Section 9 application filed by the OC being CP(IB) No.263/9/HDB/2022 is dismissed with costs, which we assess as Rs.10 lakhs. The cost of Rs.10 lakhs be paid by Respondent No.1 to the Appellant within 30 days from today.
- (3) A copy of this order be forwarded to Insolvency and Bankruptcy Board of India to look into the matter and take appropriate measures.

[Justice Ashok Bhushan]
Chairperson

[Barun Mitra]
Member (Technical)

NEW DELHI

23rd March, 2026

Ashwani/Anjali