IN THE NATIONAL COMPANY LAW TRIBUNAL
AT ALLAHABAD BENCH

C.P. NO. (IB) 91/ALD/2019

(Application under Section 9 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred as "the Code/IBC") read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016)

IN THE MATTER OF:

M/S SURYA DAY PRIVATE LIMITED

HAVING REGISTERED OFFICE AT M-17, 4TH FLOOR,

MAIN MARKET GREATER KAILASH PART II NEW DELHI-110048

.....OPERATIONAL CREDITOR

VERSUS

M/S SUNRUN SOLAR VENTURES (UP) PVT. LTD.

CIN: U74999UP2017PTC092323

A 411, INDIRA NAGAR, LUCKNOW,

UTTAR PRADESH-226016, INDIA

.....CORPORATE DEBTOR

CORAM:

1. SH. PRAVEEN GUPTA, HON'BLE MEMBER (JUDICIAL)

2. SH. ASHISH VERMA, HON'BLE MEMBER (TECHNICAL)

Date of Pronouncement- 11.11.2025

Counsel appeared through Physical/ Virtual Hearing :

Sh. Aditya Madaan with Sh. Gauravdeep Bhal
& Ms. Muskan Chhugani, Advs. :*For the Operational Creditor*

Sh. Raghav Nayar, Adv. :*For the Corporate Debtor*

-Sd- -Sd-

ORDER

1. The present Application was filed on 20.02.2019 under Section 9 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred as "the Code/IBC") read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 (hereinafter referred as "the Rules") by M/s Surya Day private Limited (hereinafter referred as "Applicant/Operational Creditor") to initiate the Corporate Insolvency Resolution Process (hereinafter referred as "CIRP") against M/s Sunrun Solar Ventures (UP) Pvt. Ltd.(hereinafter referred as "Corporate Debtor") due to its failure to pay the total outstanding operational debt of Rs. 1, 68, 00,000/- (Rupees One Crore and Eight Lakh) being the principal amount. In addition to above amount, interest of Rs.13,57,808/- (Rupees Thirteen Lakh Fifty Seven Thousand Eight Hundred and Eight Only) has also been taken into account till 17/10/2018@14.75% per annum for arriving at the total outstanding debt. The Applicant has sought following reliefs: -

"…

1. *Admit the application and initiate corporate insolvency resolution process under the Insolvency and Bankruptcy Code, 2016;*
2. *Declare the moratorium and public announcement in term of section 13 and 14 of the Insolvency and Bankruptcy Code;*
3. *Restrain the Corporate Debtor, its Directors, Executives, Officers, Agents, Employees from transferring, alienating,*

-Sd- -Sd-

encumbering or parting with possession of assets, properties or any commercial unit of the Corporate Debtor till the final disposal of the present application;

4. *Restrain the Corporate Debtor, its Directors, Executives, Officers, Agents, Employees from appropriating the money received by the Corporate Debtor to any use other than for discharging the liabilities of the Financial Creditors;*
5. *Exempt the Financial Creditors from filing the certified copies of the annexures and permit the financial creditors to file true typed/photocopies of the annexures.*
6. *Award the cost of this application to be paid out of the assets of the Corporate Debtor;*
7. *Pass such other and further orders as this Hon'ble Tribunal may deem fit and proper.*

…"

2. As stated in the Application, the Operational Creditor is engaged in the business of design, procurement, installation, construction and maintenance of solar power projects. Whereas the Corporate Debtor is engaged in the business of supplying solar power to customers.

3. In 2017, the Corporate Debtor approached the Operational Creditor and informed that it had entered into a Power Purchase Agreement with M/s Lucknow Metro Rail Corporation (hereinafter referred to as "LMRC") for the development of a 1000 kwp Solar Power PV Project at the Lucknow Metro Rail Depot, Transport Nagar, Lucknow.

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4. Pursuant to the said Agreement, the Corporate Debtor expressed its intention to engage the Operational Creditor for carrying out the engineering, procurement, construction, testing, and commissioning works, including designing, execution, and commissioning of the solar power plant of 1000 kWp capacity at the aforesaid location.

5. Upon reviewing the scope of work specified for the LMRC project, as detailed in Schedule 1 of the EPC Contract and based on the disclosures made by the Corporate Debtor, the Operational Creditor entered into an "Engineering, Procurement and Construction Contract" (hereinafter referred to as "EPC Contract") with the Corporate Debtor on 29.11.2017. Copy of the EPC has been annexed as Annexure 2 with the Application.

6. As per the terms of the EPC Contract, the Operational Creditor initiated the work during January 2018, under intimation to the Corporate Debtor. Amongst the other agreed terms of work to be done, the Corporate Debtor and Operational Creditor had also agreed that Corporate Debtor would adhere to the payment obligations as provided under Schedule 2 of the said EPC and the same is reproduced below:

-Sd- -Sd-

" SCHEDULE-2

SCHEDULE OF PAYMENTS

1. CONTRACT PRICE

The Contract Price shall be calculated in Rupees considering on the principles below and is inclusive of all Taxes:

1. INR 55 per Wp of nameplate capacity of solar photovoltaic modules installed at Site.

2. PAYMENT MILESTONE

S. No.	***Milestone***	***% Payout***	***Milestone Description***
1.	*Advance*	*10.00%*	*Mobilization advance*
2.	*Delivery of Module Mounting Structure*	*10.00%*	*Delivery of MMS (Mounting Structure Structure) at site*
3.	*Delivery of Inverters*	*10.00%*	*Delivery of Inverter at site*
4.	*Order of Modules*	*60.00%*	*Confirmation of ordering of modules*
5.	*Completion of Supply*	*5.00%*	*Delivery of Complete approved BOS (Balance of System) at site*
6.	*Commissioning (COD)*	*5.00%*	*On Commissioning - Commissioning defined as:* *Commissioning (COD)* *5.00%* *(a) Completion of Tests on Completion as per schedule 4* *(b) CEIG has approved the plant for interconnection with the GRID*

7. The Corporate Debtor informed the Operational Creditor that it was in the process of securing a loan from the Indian Renewable

-Sd- -Sd-

Energy Development Agency (herein after referred to as "IREDA"). The Corporate Debtor urged the Operational Creditor to hasten the delivery of materials, as the LMRC had set a project completion deadline of 16.3.2018, communicated vide letter dated 29.12.2017. Consequently, despite the Corporate Debtor's failure to adhere to the agreed payment schedule, the Operational Creditor agreed to continue the work to support the Corporate Debtor's interests. A copy of letter sent by LMRC to the Corporate Debtor dated 29.12.2017 has been annexed as **Annexure 3** with the Application.

8. It is submitted in the said letter that the Operational Creditor completed the project within the deadlines set by the LMRC for the Corporate Debtor and in accordance with the EPC Contract timelines, despite receiving delayed payments from the Corporate Debtor. The Operational Creditor further mentioned in the said letter that according to their information, the Corporate Debtor has already claimed a subsidy from LMRC for the project, which was to be disbursed only after the project's commissioning, as stated in LMRC's letter dated 29.12.2017. It is further stated by the Operational Creditor that reliable sources indicate that the Corporate Debtor is continuously billing LMRC for solar power supplied from the Solar Power PV System, thereby profiting at

-Sd- -Sd-

the expense of the Operational Creditor. Therefore, as contended by the Operational Creditor that this suggests that the Solar Power PV System is fully commissioned, and the Corporate Debtor is unjustifiably withholding payment to the Operational Creditor. The Operational Creditor pointed out that it rendered the agreed supply and services successfully in accordance with the EPC Contract and raised invoices accordingly. Said invoices had been sent both in hard copy as well as via electronic means to the Corporate Debtor. Details of invoice raised by the Operational Creditor are given in tabular form as below :-

S.No	**Date**	**Invoices**	**Invoices Amount (inclusive of service tax) (Rs.)**
1.	31.3.2018	ST/0105017- 18	4,30,50,000
TOTAL			4,30,50,000

9. With regard to the payment, the Operational Creditor has submitted that the Corporate Debtor has paid only Rs.3,82,00,000/- (Rupees Three Crore Eighty Two Lakh only) against the above mentioned invoice raised. Despite the repeated reminder, the Corporate Debtor has failed to pay the remaining amount. A Copy of invoice dated 31.03.2018 and Copy of bank statement of ICICI Bank, Senior Mall Sector 18 Branch, situated

-Sd- -Sd-

at K-1, Senior Mall, Sector 18, Noida UP- 201301, depicting the payment received till 13.02.2018 from the Corporate Debtor along with the Copy of the ledger of Corporate Debtor maintained by the Operational Creditor from 01.04.2017 to 20.09.2018 have been annexed as Annexure 4, Annexure 5 and Annexure 6 respectively with the Application.

10. The Operational Creditor further pointed out that EPC Contract explicitly stipulates that payments must be made according to the agreed terms. However, the Corporate Debtor has consistently failed to comply with these terms of the EPC contract. The Operational Creditor fulfilled its obligations by providing the agreed supplies and services, and the project's commissioning was verified by the final customer, i.e LMRC. As per the Operational Creditor, despite fulfilling all the terms and doing the work as per the EPC contract, the Corporate Debtor repeatedly defaulted on making payments as per the agreed schedule.

11. As further stated by the Operational Creditor that on 23.05.2018 the Corporate Debtor raised concerns about the performance of the Solar PV Power Plant. Nevertheless, despite the outstanding payments, the Operational Creditor, recognizing the public interest involved, completed the assigned work by investing

-Sd- -Sd-

additional funds from its own resources. On the same day, i.e 23.05.2018, the Operational Creditor sent emails to the Corporate Debtor confirming that the LMRC solar plant was fully operationalised. Additionally, vide an email dated 11.6.2018, the Operational Creditor reiterated the project's completion and urged the Corporate Debtor to settle the outstanding payments, enabling the Operational Creditor to clear dues owed to its vendors for materials purchased to execute the services and supplies required under the EPC Contract. A copy of mail dated 23.5.2018 sent by Corporate Debtor to Operational Creditor regarding concerns in performance of the Solar PV Power Plant and copy of email dated 23.05.2018 and 11.6.2018 sent by Operational Creditor detailing the completion of work and requesting the Corporate Debtor to pay the outstanding payment have been annexed as ***Annexure 7*** and ***Annexure 8*** respectively with the Application.

12. Despite repeated emails dated June 15, 2018; June 18, 2018; May 10, 2018; July 11, 2018; July 13, 2018; and July 16, 2018 sent by the Operational Creditor to the Corporate Debtor urging payment of the outstanding dues, the Corporate Debtor responded to only a handful of these emails. In those replies, as submitted by the Operational Creditor, objections raised by the

-Sd- -Sd-

Corporate Debtor regarding the quality of work performed by the Operational Creditor were baseless, not supported by any substantive evidence. Copy of reminder email dated 10.05.2018, 15.06.2018,18.06.2018, 11.07.2018 and 13.07.2018 and 16.07.2018 have been annexed as ***Annexure 9 (Colly)*** with the present petition under consideration.

13. As per the Operational Creditor, the Corporate Debtor according to the Payment Schedule explicitly agreed to release payments to the Operational Creditor upon achieving specific milestones. As outlined in Schedule-2 of the EPC Contract, 95% of the total payment was due upon completion of the supply, with the remaining 5% payable upon project commissioning. However, the Corporate Debtor has paid only 66% (approx.) of the total contract amount. Despite this default in adhering to the payment schedule, the Operational Creditor supported the Corporate Debtor during the period when delays occurred in getting funds by it from IREDA. This demonstrate that the Corporate Debtor has acted in bad faith by failing to clear the outstanding balance.

14. All supplies under the contract were completed before 16.03.2018, and the project was commissioned on that date, entitling the Operational Creditor to receive 100% of the payment as per Clause 12 and Schedule 2 of the EPC Contract. the

-Sd- -Sd-

Corporate Debtor has never raised any issues regarding incomplete supplies. Despite this payment clause as per which, it was obligated to pay 95% of the EPC Contract Value upon supply completion, the Corporate Debtor only paid approximately 69.46% of the Contract Value. This demonstrates that the Corporate Debtor has deliberately withheld the payment to the Operational Creditor due for the completed supply of materials under the contract.

15. Due to failure of the Corporate Debor to pay the outstanding amount, the Operational Creditor issued demand notice dated 22.10.2018 under Section 8 of the Code through its advocate to the Corporate Debtor calling upon it to make the payment of outstanding dues of supply and services amounting to Rs.1,68,00,000/-(Rupees One Crore and Sixty Eight Lakh Only)/- along with interest calculated @14.75% p.a. i.e. Rs.13,57,808/- (Rupees Thirteen Lakh Fifty Seven Thousand Eight Hundred and Eight Only)/- however, the Corporate Debtor failed to repay the amount due to the Operational Creditor. A Copy of the demand notice issued on 22.10.2018 by Operational Creditor through its advocate has been annexed as ***Annexure 10*** with the Application.

-Sd- -Sd-

16. The said notice was sent to the Corporate Debtor by speed post, which was delivered to him on 27.10.2018. A copy of postal receipt and the tracking report about the status of the notice sent to the Corporate Debtor and directors of Corporate Debtor have been annexed as ***Annexure 11 (Colly)*** with the present Application.

17. The Corporate Debtor neither replied to the said demand Notice nor made any payment towards the unpaid operational debt. The Operational Creditor filed its bank statement from 14.02.2018 till 31.12.2018 of the account maintained with ICICI Bank Senior Mall Sector 18 Branch, situated at K-1, Senior Mall, Sector 18, Noida UP- 201301 confirming that there is no payment received for the unpaid operational debt from 14.02.2018 till 31.12.2018 from the Corporate Debtor. Copy of bank statement has been annexed as ***Annexure 12*** with the present Application.

18. The Corporate Debtor has failed and neglected to pay the said admitted sum of Rs.1,68,00,000/- along with interest of Rs.13,57,808/- computed till 17.10.2018 @14.75% per annum or any portion thereof, and therefore the present application under section 9 of the Code has been filed, for initiating CIRP against the Corporate Debtor.

-Sd- -Sd-

REPLY ON BEHALF THE CORPORATE DEBTOR

19. In response to the instant application, the Corporate Debtor has filed its reply denying the contents of the applications and submitting that the application deserves to be dismissed on preliminary objections raised itself and also filed para-wise reply to the application as discussed below.

i. It is submitted that the Corporate Debtor entered into a Power Purchase Agreement on 28^{th} April 2017 with the Lucknow Metro Rail Corporation Limited (hereinafter referred to as "LMRC") to install and operate a solar photovoltaic power plant of 1000 KW capacity at LMRC, Transport Nagar Depot, Lucknow and thereafter, to supply solar power to LMRC. A copy of the Power Purchase Agreement dated 28th April 2017 has been annexed as ***Annexure R1*** with this reply.

ii. The Applicant Operational Creditor approached the Corporate Debtor, expressing strong interest in providing materials for the project that the Corporate Debtor had obtained from LMRC.

iii. It is also submitted that even before the Corporate Debtor entered into an agreement with the Applicant, it had made

-Sd- -Sd-

advance payments to the tune of Rs 41 lacs and as such payments were being made on the oral demands of the applicant without there being any quotation being provided to the Corporate Debtor at any point of time.

iv. Further, it is submitted that the Corporate Debtor vide an email dated 08.11.2017, inquired from one of the Directors of the Operational Creditor namely, Mr. Girish Narang regarding price of the materials to be supplied and the payment terms that needed to be followed, since the Corporate Debtor had secured a significant loan to fund the project and was obligated to service its repayments. A copy of the e-mail dated 24th October 2017 and 8th November 2017 sent in this regard have been annexed as ***Annexure - R2*** with this reply.

v. The Corporate Debtor asserts that following the advance payment as discussed above, all discussions concerning payments were conducted orally, and no quotations for the supplied materials were ever furnished to it. Moreover, the Applicant Operational Creditor consistently failed to provide invoices for the delivered goods, despite repeated requests from the Corporate Debtor to do so. The Corporate Debtor further submitted that it made consistent payments to the Operational Creditor, totalling Rs. 3.82 crores by the end of February 2018. This amount has been acknowledged by the Operational Creditor in its application. Every part of these payments was disbursed in advance, well before the issuing of invoice dated 31.03.2018. A copy of the e-mail dated 28.02.2018 addressed to the Operational Creditor, which shows that all the payments were made in advance i.e. even before the invoice was raised, has been annexed as ***Annexure R3*** with this reply. The Corporate Debtor has also annexed a copy of statement of account of Syndicate Bank, Hazratganj, Lucknow showing payments made to the Operational Creditor by the Corporate Debtor and the same has been annexed as ***Annexure - R4*** with this reply.

vi. Furthermore, the Corporate Debtor submits that the project's completion deadline was 16.03.2018, and as the last date was approaching, the Corporate Debtor discovered the Operational Creditor's unprofessional and malicious conduct in February 2018, particularly concerning the procurement of various materials, their quantities, and pricing. The Operational Creditor had made all such decisions unilaterally, creating significant obstacles that hindered the Corporate Debtor's ability to execute the project successfully and on schedule. In addition to this, the Applicant Operational Creditor imposed high charges while delivering substandard materials and executing incomplete work on-site. These issues were formally conveyed to the Operational Creditor vide an email dated 08.2.2018. Copy of e-mail dated 8th February 2018 has been annexed as Annexure- R5 with the reply.

vii. The Corporate Debtor further submits that to his utter shock, the Operational Creditor's representatives abruptly abandoned the project site without finishing the work or handing over the project, and the operational creditor never provided any satisfactory justification for this behaviour. It is important to note that no invoices had been issued to the Corporate Debtor at that juncture. Even before any such invoice was generated, the Corporate Debtor had already disbursed Rs. 3.82 crores to the Operational Creditor for which no itemized breakdown or quotations had been supplied. A copy of e-mail dated 23rd March 2018 addressed to the Operational Creditor has been annexed as ***Annexure R6*** with the reply. The Corporate Debtor again

-Sd- -Sd-

specifically reiterated the points of incomplete work left by the Operational Creditor vide e-mail dated 13th April 2018, copy of which is being annexed hereto and marked as ***Annexure R7*** with this reply.

viii. It is further submitted that the Corporate Debtor received an email dated 15.05.2018 from Mr. Manish Bhatnagar, an employee of the Operational Creditor regarding the remittance of balance payment for meeting the requirement of working capital. In response, the Corporate Debtor sent a reply email on 23.05.2018, in which it highlighted a major dispute over the unfinished work and criticized the negligent conduct of the Operational Creditor's personnel. The email also informed the Operational Creditor that the plant was malfunctioning. A copy of the Operational Creditor's email dated 15.05.2018 has been annexed as Annexure R8 to this Reply. A copy of e-mail dated 23.05.2018 has been annexed as ***Annexure R9*** with this Reply.

ix. In spite of the aforementioned emails, the Operational Creditor refrained from completing the unfinished works and furnishing of details of the works for which payments made in advance were accounted for, even after the

-Sd- -Sd-

Corporate Debtor repeatedly and explicitly notified them. Once more, through an email dated July 9, 2018, the Corporate Debtor told the Operational Creditor that it had received no accounting or reconciliation of the prior payments remitted. Furthermore, the project for which the operational creditor was contractually bound to complete, had been abandoned halfway, thereby sparking substantial disputes between the Operational Creditor and the Corporate Debtor over the unfinished work. A copy of e-mail dated 9th July 2018 has been annexed as ***Annexure-R10*** with this reply.

x. To substantiate the contention as to the contractual work to be done by the Operational Creditor remained unfinished, the Corporate Debtor submitted letters received from LMRC wherein details of the deficiencies in the project work awarded by it to the Corporate Debtor, have been mentioned, all of which is the result of the Operational creditor's failure to perform in respect of this project work assigned to it by the Corporate Debtor, as well as its deceitful and intentional misconduct. As pointed out by the Corporate Debtor, the Operational Creditor bears responsibility for damages arising from the losses inflicted

-Sd- -Sd-

on the Corporate Debtor. The Corporate Debtor has annexed copies of letters dated 4th May 2018, 2nd July 2018, 10th August, 2018, 1st September 2018, 5th October 2018 and 22nd November 2018 written by LMRC requesting the Corporate Debtor to complete the pending work as stipulated in the agreement. These communications were also forwarded to the applicant Operational Creditor through email. The same are collectively annexed as ***Annexure-R11*** to this Reply.

xi. The Corporate Debtor submits that it is important to emphasize that the Operational Creditor has been contacting the Corporate Debtor's other contractors and obstructing them from carrying out the Corporate Debtor's assignments, thereby attempting to coerce the Corporate Debtor into submission as a means of deflecting accountability for its own shortcomings in fulfilling the project and acknowledging the payments already received. Copy of e-mail dated 2nd May 2019 of one such sub-contractor has been annexed as ***Annexure R12*** to this Reply.

xii. It is also contended by the Corporate Debtor that the amount due as mentioned in the Part-IV of the application

-Sd- -Sd-

asserted by the Operational Creditor in its application u/s 9 lacks any substantive foundation. No item wise breakdown of the invoiced sum has been supplied, and the invoice itself omits any specifics concerning the particular of goods or services for which payment is demanded.

xiii. In this regard, it is submitted that the application filed by the Operational Creditor under Section 9 of the IBC contains no mention whatsoever of the goods purportedly supplied and the services carried out by the Operational Creditor, nor does it identify the obligations it seeks to impose on the Corporate Debtor. The correspondence annexed by the Operational Creditor itself demonstrates that it never disclosed the precise nature of the goods or services for which payments were demanded, nor did it provide any unit-wise cost analysis or other form of breakdown to substantiate the invoiced figure. The aggregate sum stated in the invoice is Rs. 4.3 crores. It is undisputed that Rs. 3.82 crores had already been remitted prior to issuance of the invoice to the applicant Operational Creditor. Consequently, the claimed amount in the application is patently unreasonable, fabricated, and devoid of any legitimate support.

-Sd- -Sd-

xiv. In addition to certain details demanded by the Corporate Debtor from the Operational Creditor pertaining to the contractual work done by it for the Corporate Debtor as discussed above, the Corporate Debtor sought quotations from alternative contractors engaged in similar activity operations and was appalled to realize that it had already overpaid the Operational Creditor for the project in question. Furthermore, contracts of this type mandate the contractor to furnish a performance guarantee for the assigned tasks, yet the Operational Creditor failed to provide any such performance guarantee or assurance to the Corporate Debtor.

xv. In this respect, the Corporate Debtor submitted that it had issued bank guarantees to LMRC in connection with the project work undertaken by it for LMRC, and consequently the Operational Creditor's refusal to complete its obligations for completing the said project work has gravely imperilled the Corporate Debtor's financial standing. In addition to above, the Corporate Debtor secured loans from IREDA, a nonbanking financial company of Govt. of India for funding such projects. Consequently, due to incomplete project work being abandoned by the applicant Operational

-Sd- -Sd-

Creditor, the Corporate Debtor faced the risk of defaulting on its IREDA repayments jeopardising its financial interest. A copy of the bank guarantee given to LMRC along with the bank statement has been annexed as ***Annexure-R13*** with this reply.

xvi. In addition to the collateral securities pledged to IREDA, the Corporate Debtor has extended a performance guarantee to LMRC, effective for a full 25 years. As a result, the Corporate Debtor has suffered severe damage of reputation and risks substantial financial losses owing to the unprofessional behaviour of the applicant Operational Creditor. The Applicant was duly apprised of the disputes over the outstanding amounts and the subpar quality of goods and services it delivered. As per the Corporate Debtor, it has raised disputes vide emails dated February 8, 2018; March 23, 2018; April 13, 2018; May 15, 2018; May 23, 2018; and July 9, 2018.

xvii. The Corporate Debtor disputed the contentions of the applicant Operational Creditor as far as the amount of operational debt claimed by the Operational Creditor due to be paid to it. As contended by the Corporate Debtor, the application has been made on unsustainable grounds and

-Sd- -Sd-

on totally frivolous figures without any valid quotation or invoice supporting such claim. Moreover, the Corporate Debtor has already raised a dispute before the applicant Operational and issued a notice as stipulated in Section 8 of the IBC Code and is also pursuing other legal remedies.

xviii. The Corporate Debtor has denied all the allegations raised in the para no's 1 to 18 of the application and prayed for the dismissal of this application.

REJOINDER ON BEHALF OF THE APPLICANT

20. The Applicant Operational Creditor has filed Rejoinder dated 14.8.2019 in response to the objections filed by the Corporate Debtor wherein the following averments have been made:-

i. With respect to existence of dispute as contended by the Corporate Debtor, it is averred by the applicant Operational Creditor that no prior dispute existed between the Corporate Debtor and the applicant Operational Creditor. The Corporate Debtor did not serve any notice of dispute to the applicant Operational Creditor. To evade its obligations under the EPC contract, the Corporate Debtor is now relying on the pretext of an "existing dispute," which never existed, as issues raised by the Corporate Debtor regarding

-Sd- -Sd-

the functionality of the installed Solar Power Plant were promptly addressed and confirmed as resolved by the Applicant.

ii. It is submitted that despite repeated requests from the applicant Operational Creditor for payment of the outstanding amount, the Corporate Debtor has failed to comply. Thus, the Corporate Debtor bears a strict burden to prove that any such dispute as being claimed now by it is genuine, bona fide and not a sham to avoid the debt. Additionally, the Corporate Debtor's claim of being uninformed about the materials used in the Solar Power Plant installation is baseless and lacks merit, as the applicant Operational Creditor consistently updated the Corporate Debtor on the utilization of advance payments and included the Corporate Debtor's employee in communications sent to material suppliers. Furthermore, the Corporate Debtor's assertion that the Solar Power Plant was not commissioned is contradicted by the fact that it issued invoices to LMRC for solar power generated from the plant installed by the Applicant.

iii. The Operational Creditor has denied the averments made in para no.8 of the Reply filed by Corporate Debtor and are

-Sd- -Sd-

accepted to the extent that the Corporate Debtor has made the advance payment to the tune of Rs. 41,00,000/-. However, it is relevant to submit that the Corporate Debtor made the advance payment to the applicant Operational Creditor voluntarily, without any prior request from the applicant Operational Creditor. The applicant Operational Creditor consistently kept the Corporate Debtor informed through emails, rendering the Corporate Debtor's claim that no quotation was ever provided by the applicant Operational Creditor entirely false. The applicant Operational Creditor informed the Corporate Debtor about the advance payment totalling to Rs. 53,00,000/- received, vide an email dated 16.01.2018.

iv. Furthermore, the applicant Operational Creditor kept the Corporate Debtor updated on payments made to Mundra Solar Private Limited for the purchase of modules used in the Solar Power Plant installation, by including Mr. Madhukar Jetley, an employee of the Corporate Debtor, in the email sent to Mundra Solar's employee on 20.1.2018. This email detailed a payment of Rs. 36,00,000/- (Rupees Thirty-Six Lakh), representing 25% of the total cost for the modules. Additionally, the applicant Operational Creditor

-Sd- -Sd-

forwarded a confirmation email dated 24.01.2018, from ABB India Ltd., regarding the purchase of the PVS-100-TL SX2 FULL Inverter, to Mr. Madhukar Jetley on 25.01.2018.

v. The applicant Operational Creditor also provided a list of materials with their prices to the Corporate Debtor on 01.11.2017, along with a signed copy of the EPC Contract, which the Corporate Debtor was required to submit to the IREDA vide an email dated 01.12.2017. These communications clearly disprove the Corporate Debtor's claims, exposing their dishonest intent. Moreover, the Corporate Debtor received an email dated 03.02.2018, accompanied by a letter from LMRC requesting the status of delivery of the required items. Copy of mail dated 16.01.2018, 20.01.2018, 24.01.2018, 25.01.2018 and 01.12.2017 along with the Copy of Bill of Quantity dated 01.11.2017 have been annexed as ***Annexure-R1 (Colly)*** with this rejoinder.

vi. It is however further submitted by the Operational Creditor that, given the nature of the solar project installation, which involved numerous materials, providing detailed information about each material was not practical. Nevertheless, the Applicant consistently informed the

-Sd- -Sd-

Corporate Debtor about the utilization of the advance payments received. In an email dated 07.02.2018, the Applicant Operational Creditor provided a list of materials required for the Solar Power Plant installation, including their prices, and requested the Corporate Debtor to release additional funds for their purchase. Furthermore, the claim that the Corporate Debtor made multiple requests for invoices is substantiated by Schedule 2 of the EPC Contract, which outlines the payment terms based on milestone achievements. Copy of EPC Contract and e-mail dated 07.02.2018 stating the payment have been annexed as ***Annexure-R3 (Colly)*** with this rejoinder.

vii. It is submitted that the EPC Contract did not mandate prior consultation or disclosure of the price and quantity of all materials before their use. Therefore, the Corporate Debtor's claim that the Applicant made unilateral decisions is entirely one-sided and intended to bolster its unfounded allegations.

viii. Further, as mentioned by the Corporate Debtor that it had received the letters from LMRC, it is to be noted that in letter dated 04.05.2018, there were many concerns raised by the LMRC. Despite not being a party to the contract

-Sd- -Sd-

entered between the Corporate Debtor and LMRC, the applicant Operational Creditor took initiative and resolved such issues. Further, to evidence that the plant has been commissioned and the Ministry of New and Renewable Energy (hereinafter referred as "the MNRE") started paying off the subsidy, it is stated that letter dated 05.10.2018 which states that 90% of the total subsidy amount has already been paid to the Corporate Debtor, which signify the commissioning of the solar power plant, therefore, it negates the contention of the Corporate Debtor that project has not been commissioned.

ix. The content of paragraph 20 of the Reply filed by the Corporate Debtor in respect of damage and losses suffered by it, the Operational Creditor denied all such allegations in its entirety as in view of the applicant Operational Creditor, it is not liable for any damages to the Corporate Debtor as all work has been performed in accordance with the terms of the EPC contract and the applicant Operational Creditor has been regularly sending reminders to the Corporate Debtor in order to seek the payment of the outstanding amount vide mail dated 09.07.2018. 11.07.2018,13.07.2018 & 16.07.2018. Copy of these mails

-Sd- -Sd-

dated 09.07.2018, 11.07.2018,13.07.2018 & 16.07.2018 have been annexed as ***Annexure R6 (Colly)*** with this Rejoinder.

ADDITIONAL AFFIDAVIT IN REJOINDER TO THE REPLY FILED BY THE CORPORATE DEBTOR

21. The Applicant Operational Creditor has also filed Additional Affidavit in Rejoinder to the reply filed by the Corporate Debtor on 31.12.2020 wherein it is averred by the applicant that the Corporate Debtor has raised false allegations regarding pre-existing dispute. It is contended that the Corporate Debtor never served any notice of dispute to the applicant Operational Creditor prior to issuance of Section 8 demand notice. Now, the Corporate Debtor is raising the claim of a pre-existing dispute to evade its outstanding dues to the Operational Creditor/Applicant.

22. It is also contended by the applicant Operational Creditor that the veracity of the Corporate Debtor's claim in its reply dated 21.5.2019, regarding the non-commissioning of the solar power plant can be assessed by noting that the Corporate Debtor has been billing the Lucknow Metro Rail Corporation (LMRC) for electricity generated from the solar power plant installed by the applicant Operational Creditor at LMRC's depot in Lucknow, Uttar Pradesh. The Corporate Debtor has been benefiting from

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the expenditure incurred by the applicant Operational Creditor for the plant's installation without settling the lawful outstanding dues as per the agreed terms of the EPC contract. This is evident from the disclosure of revenue under the category "Revenue from Operations," amounting to Rs. 53,33,550/- as reported on page 9 of the Financial Statement for the year ending 31.03.2019.

23. Further, it is contended that one of the prerequisites for releasing payment by the Corporate Debtor for the services provided by the applicant Operational Creditor was the commissioning of the solar power plant. It is submitted that the Corporate Debtor has already received a subsidy from the Ministry of New and Renewable Energy (MNRE), as disclosed by the Corporate Debtor in its financial statement for the year ending on 31.03.2019, on page 12 under the heading "Reserve & Surplus" as Capital Reserve (Subsidy), amounting to Rs. 1,50,00,000/-. The authenticity of this figure is supported by its audit and certification by an independent chartered accountant, Seth & Associates. This fact inherently confirms the commissioning of the solar power plant, thereby refuting the Corporate Debtor's claim that the project has not been commissioned and that there were issues with the services provided by the applicant Operational Creditor. Copy of Financial statement for financial

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year ended on 31.03.2019 has been annexed as ***Annexure AR1*** to this additional affidavit.

24. Based on the aforementioned facts, it is clear that the Corporate Debtor has failed to substantiate any pre-existing dispute prior to the demand notice issued under Section 8 of the Insolvency and Bankruptcy Code. The Corporate Debtor has raised baseless and frivolous arguments to evade its obligation to settle the outstanding dues, which do not qualify as pre-existing dispute. Therefore, the application may be admitted for admission.

REPLY OF THE CORPORATE DEBTOR TO THE ADDITIONAL AFFIDAVIT IN REJOINDER FILED BY THE OPERATIONAL CREDITOR

25. The Corporate Debtor has filed reply to the Additional Affidavit on 11.01.2021 wherein he has denied the allegations made in the Additional Affidavit and it is contended that the Corporate Debtor raised significant disputes through emails dated 08.11.2019, 08.2.2018, 28.2.2018, 23.3.2018, 13.4.2018, 23.5.2018, and 09.7.2018, asserting that no payment is due to the Operational Creditor due to incomplete work. These issues remained unresolved and are pending up to this day. Furthermore, it is alleged by the Corporate Debtor that the Operational Creditor's workers in a grossly negligent and irresponsible manner, refused to complete the work and abandoned the construction site.

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26. It is further submitted by the Corporate Debtor that as far as the issue regarding the Section 8 notice is concerned, the same has been settled by the Hon'ble NCLAT in its judgment dated 24.02.2020 in ***Neeraj Jain Vs Cloudwalker Streaming Technologies Private Limited***. The Operational Creditor has failed to provide any material in support of the amount mentioned in the application and the Section 8 notice, which has been discussed exhaustively in the reply as well as the Written Submissions filed by the Corporate Debtor. Copy of the judgment of the Hon'ble NCLAT in ***Neeraj Jain Vs Cloudwalker Streaming Technologies Private Limited*** has been annexed as ***Annexure A*** with this Reply.

REPLY TO THE AFFIDAVIT DATED 11.01.2021 ON BEHALF OF THE CORPORATE DEBTOR

27. The Corporate Debtor has filed a reply to the affidavit filed by the Operational Creditor, which they have filed on the basis of a letter received from U.P. Metro Rail Corporation Limited (UPMRC Ltd.) to support its claim that the solar plant installed by it has been completed. In this reply, the Corporate Debtor refuted the claim of the Operational Creditor on the basis of further clarification obtained through RTI application from UPMRC Ltd.

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28. The Corporate Debtor has denied all the allegations raised in the Affidavit filed by the Operational Creditor and submitted that according to the reply of the UPMRC Ltd. provided by the Applicant Operational Creditor, the full subsidy amount has not been released due to incomplete tasks, including the remote monitoring system, cable dressing, manual, and documentation. These details have been materially concealed by the Operational Creditor. Copy of RTI application dated 13th January 2021 and the reply dated 12.2.2021 by the UPMRC Ltd. in this regard have been annexed as **Annexure - I and Annexure - II** to this Reply filed by the Corporate Debtor in response to the affidavit dated 11.01.2021 filed by the Operational Creditor.

29. According to the reply of the UPMRC Ltd., the project beneficiary, the work at the site remains incomplete, resulting in the withholding of the full subsidy payment to the Corporate Debtor. The Corporate Debtor has consistently raised disputes with the Operational Creditor and strongly contests the alleged outstanding amount claimed by the Operational Creditor. The project's incomplete status and its failure to operate at the full installed capacity of one megawatt are corroborated by UPMRC Ltd.'s own statements. Furthermore, the Operational Creditor has failed to provide a breakdown justifying the claimed amount

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of Rs. 4,30,50,000/-. It is an undisputed fact that the Corporate Debtor has already paid Rs. 3.82 crores.

30. It is furthermore submitted that the Operational Creditor never provided any additional invoices or quotations to the Corporate Debtor. The EPC contract specifies only a rate and does not represent the final contract price, as claimed by the Operational Creditor, especially since the plant is not operating at its agreed capacity. The Corporate Debtor has raised significant disputes in this regard, which are substantiated by the letter from the UPMRC Ltd. It is further submitted that the non-issuance of a completion certificate by UPMRC Ltd. demonstrates that the Corporate Debtor is bearing the financial burden of the incomplete work performed by the Operational Creditor, which is also adversely impacting its market reputation.

SUPPLEMENTARY AFFIDAVIT FILED ON 14.12.2021 ON BEHALF OF OPERATIONAL CREDITOR, IN TERMS TO THE ORDER DATED 30.11.2021.

31. This Tribunal during the course of hearing held on 30.11.2021 sought query from the learned counsel whether payments were required to be made in terms of milestones for such projects or on any other consideration. In compliance of the same order, a supplementary affidavit dated 14.12.2021 has been filed making the following averments:-

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i. The Operational Creditor completed the project within the stipulated timeline as enumerated in the EPC. This was despite the Corporate Debtor's failure to meet payment obligations promptly. The Operational Creditor knew that delays in project completion could lead to liquidated damages imposed by the UP-Metro Rail Corporation, causing losses for the Corporate Debtor.

ii. To substantiate this claim, the Operational Creditor has relied on the replies given by UPMRC to the two RTI applications. The first RTI application dated 10.12.2020 was preferred by the Applicant to which UPMRC replied on 07.01.2021, and the second RTI application to UPMRC was made by the Corporate Debtor on 13.01.2021 to which UPMRC replied on 12.02.2021. Both the RTI Applications and their respective replies have been annexed as Annexure – 6 (Colly.) with this Affidavit.

iii. A plain reading of the reply dated 07.1.2021 of the UPMRC to the RTI Application of the Applicant (which was acting under an EPC contract-having its role only till commissioning of the 1MWp Solar Power Project) clarifies the following:

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a. *That the solar power project was commissioned and in fact the Commercial Operations started on 14th March 2018 with installed capacity of 1MWp;*

b. *That Electrical Inspector certificate has been obtained evidencing commissioning of said project.*

c. *That payments under the solar power project are being done by UPMRC to the Corporate Debtor.*

d. *That subsidy has been received from Ministry of New & Renewable Energy for said solar power project.*

iv. In response to the Corporate Debtor's RTI, UPMRC replied stating that one inverter has been non-functional since July 2019, over a year after the project's commissioning, indicating the Corporate Debtor's inadequate maintenance and upkeep. As per the EPC agreement, the applicant Operational Creditor was not responsible for the project's operation, maintenance, or upkeep, with their role limited to commissioning the project, which was successfully completed.

v. In response to RTI Applications, UPMRC stated that 90% of the subsidy has been received by the Corporate Debtor concerning the said project. While the Corporate Debtor has even received the subsidy for said project which is operating and earning even as on date, it has paid less than 70% of the agreed payment as per EPC to Operational Creditor, who successfully commissioned said project.

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vi. The applicant Operational Creditor has also submitted that as per the EPC which is a final contract between the Parties, clause 1.14 of EPC specifically states that EPC supersedes all previous agreements between the parties. There is no requirement to provide any item wise quotes and clause 12.1 of the EPC Contract provides payments shall be made on the basis of lump sum Contract Price. All the items duly provided to the Corporate Debtor is evident from email dated 01.12.2017. Copy of the email dated 01.12.2017 has been annexed as ***Annexure-7*** with this affidavit.

COUNTER AFFIDAVIT FILED BY THE CORPORATE DEBTOR ON 04.01.2022 TO THE SUPPLEMENTARY AFFIDAVIT OF OPERATIONAL CREDITOR ON 14.12.2021

32. The counter filed by the Corporate Debtor is as under: -

(i) With respect to contentions raised in para no.2, it is averred that no quotation or invoice of the material supplied were ever supplied to the Corporate Debtor except an invoice dated 31.03.2018 which also did not provide any break-up of the materials which were supplied to the Corporate Debtor.

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(ii) The Corporate Debtor has time and again reiterated through affidavit that the claim made by the Operational Creditor by means of instant application u/s 9 has no basis, whatsoever.

(iii) The Operational Creditor has left the project midway, failing on its promise and commitment in commissioning the said project and for the work done, Rs. 3.82 crores have already been paid up till February 2018 in advance.

(iv) The Corporate Debtor further referring to various e-way bills, purchase orders and delivery challans as annexed in Annexure 2 to 5 of the Supplementary Affidavit 14.12.2021 filed by the Operational Creditor, pointed out that these documents relate to procurements made by the Operational Creditor from certain vendors to supply to the Corporate Debtor during the course of project and in fact, a total of these procurements come to around Rs. 3.27 crores which from its own showing as per the Corporate Debtor, establishes that an excess payment of Rs. 54 lacs have been made to the Operational Creditor. In this regard, it is also pointed out that these documents were never supplied to the Corporate Debtor during the course of

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carrying out the work or before filing of the instant Section 9 application.

(v) Regarding EPC contract, it has been pointed out that it stipulates various contingencies regarding the obligations on part of the Operational Creditor (contractor) and Clause 12.2 of the Contract stipulates the course of action to be taken in case of dispute, and hence it is absolutely incorrect on the part of the applicant Operational Creditor to state that it was discharged from giving any invoice of the materials procured for Corporate Debtor.

(vi) It is further pointed out by the Corporate Debtor that clause 19.3 of the EPC contract provides for initiation of arbitration in case dispute arises in contractual work, and hence the pre-existing contractual dispute which has occurred on account of non-fulfilment of the commitments on the part of the applicant can at best be referred for arbitration and the applicant is only misusing this forum to arm twist the Corporate Debtor.

(vii) It is also pointed out that as the work by the Operational Creditor has not been completed and complete documents for the materials supplied have not been provide, it is not

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able to utilise the warranty of the materials supplied and facing problems in its maintenance and also, due to the work having been not fully completed, it is not able to get full amount of the subsidy, which is substantiated by the reply dated 12.02.2021 of the UPMRC.

(viii) It is further argued that the Corporate Debtor way back in the month of February 2018 i.e. much prior to the date of notice, had raised its concern regarding the procurement of materials their prices and thereafter, continuous correspondences were made with the applicant Operational Creditor in the month of March, April, May and July 2018 all way before the date of notice regarding the quality of services provided by applicant which itself shows that the pre-existing dispute had already been raised by the Corporate Debtor. In this regard, e-mails dated 08.02.2018, 23.03.2018, 13.04.2018, 15.05.2018, 23.05.2018 and 09.07.2018 have been referred, copies of which have already been attached with the Reply filed in May 2019.

(ix) In the letter dated 12.02.2021 of LMRC, the shortcomings in the project have been pointed out which has happened

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due to poor quality of work done by the Operational Creditor because of which the Corporate Debtor is suffering

(x) As regards the e-mail dated 1st December 2017 referred by the Operational Creditor taking a plea that EPC supersedes all previous agreements between the parties, it is submitted that it only relates to description of products and in no matter relates to the prices of the materials and as such cannot be termed as either an invoice or quotation. It is also pointed out that the Corporate Debtor even before the project was completed raised objections with respect to quotations and prices of the materials in mails dated February and March 2018. Disputes regarding non-functioning were raised in mails of April, May and July 2018.

(xi) As regards the invoice dated 31.03.2018 amounting to Rs. 4,30,50,000/-, it is submitted that this invoice is raised without providing any description of materials and even not showing about the advance payment of Rs. 3,82,00,000/-. It is specifically pointed out that even if the supporting documents as attached with the affidavit dated 14.12.2021 are taken on the face value, then also no debt is established and it is alleged that the applicant Operational Creditor has in fact, made heavy profits from the said contract.

AFFIDAVITS IN COMPLAINCE OF ORDER DATED 19.5.2023

33. This Tribunal vide order dated 19.5.2023 while hearing the arguments was of the view that a flowchart detailing step by step implementation/completion of construction, execution and commissioning of 1000 kwp solar power plant at Lucknow Metro Rail Depot, Transport Nagar, Lucknow be filed by way of affidavit. In compliance of the said order dated 19.05.2023, the Operational Creditor filed an affidavit dated 01.07.2023 giving the details of date wise activities carried out by the Operational Creditor for completing the project and payments becoming due on completion of such activities totalling to the contract value of Rs. 5,50,00,000/- out of which, Rs. 3,82,00,000/- have already been paid by the Corporate Debtor. In response to the said Affidavit of the Operational Creditor, the Corporate Debtor filed a counter on 27.07.2023 pointing out again that no details of materials supplied have been given for arriving at the contract value of Rs. 5,50,00,000/- and even in the invoice dated 31.03.2018, no details of works executed and materials supplied have been given for the value of Rs. 4,30,50,000/- shown in the said invoice. It is also pointed out that on the basis of e-way bill

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supplied by the Operational Creditor, total amount of the material supplied comes to Rs. 3,27,00,000/- against which the Corporate Debtor has already paid Rs. 3,82,00,000/-.

34. During the course of hearing on 19.10.2023, the Ld. Counsel of the Applicant Operational Creditor sought time to place on record the specific scope of work based upon which the project was to be executed by the Operational Creditor on the work order given by the Corporate Debtor for the purpose of commissioning of the project at the site under the control of the Lucknow Metro Rail Corporation.

35. In compliance of the said order dated 19.10.2023, the Applicant Operational Creditor, M/s. Surya day Private Limited, has filed affidavit on 07.12.2023 wherein a copy of email dated 12.10.2017, sent by the representative of Operational Creditor to the engineer of LMRC, annexed as Annexure-2 and a copy of email dated 08.03.2018 along with attachments annexed as Annexure-3 has been placed on record.

36. It is stated that the EPC Contract stipulates the specific scope of work based upon which the project was to be executed by the Operational Creditor for the purpose of commissioning of the project. The scope of work is reproduced hereinbelow:

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"WHEREAS:

B. Owner wishes to appoint Contractor to carry out the Works for the design, construction, execution and commissioning of solar power plant at Lucknow Metro Rail Depot, Transport Nagar, Lucknow, estimated to total 1000 kwp.

…"

37. The EPC Contract fully outlines Operational Creditor 's scope of work, encompassing design, procurement, execution, and commissioning of the solar power plant. Upon successful commissioning on March 14, 2018, as acknowledged by the Lucknow Metro Rail Corporation (LMRC), Operational Creditor completed all its obligations under the contract, with no further responsibilities remaining.

38. The Applicant Operational Creditor submits that the Corporate Debtor is responsible for the operation and maintenance of the solar power plant for LMRC for a 25-year period. This includes regular repairs and operational adjustments to ensure optimal performance. Operational Creditor, being the contractor, has no role in these ongoing activities, as its involvement ended with the project's commissioning on 14.3.2018.

39. Subsequently, when the matter came up for hearing on 23.4.2024, this Tribunal directed both the Ld. Counsels representing the parties to place on record affidavit clarifying the value/cost of the item/equipment to be supplied and

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commissioned thereafter to make it fully operational under the contract executed inter se between the parties. The details of the value/ cost of the amount of contract and the percentage of the amount paid so far in terms of the total value of the contract within a period of two weeks.

40. The Applicant Operational Creditor has filed an affidavit on 18.07.2024 in compliance with the aforesaid order wherein it is stated that EPC Contract was based on the lump sum price contract and the value /cost of the item /equipment to be supplied and commissioned thereafter, is not explicitly stated in the EPC Contract. The model of the EPC Contract was lump sum price which covered supply of items and equipment, installation and commissioning without bifurcating the individual cost of components.

41. The Corporate Debtor has also filed an affidavit on 02.12.2024 wherein it has denied the allegations raised in aforesaid affidavit filed by the Operational Creditor and it has been specifically stated that there is no default in repayment of the amount due to the Operational Creditor. As per the Corporate Debtor, it has made an excess payment of Rs. 54,00,000 to the Operational Creditor. The Corporate Debtor raised concerns regarding quality of the services and procurement of supplies vide emails dated 8th

-Sd- -Sd-

Feb. 2018, 23rd March, 2018, 13th April 2018, 15th May 2018, 23rd May 2018 and 9th July 2018 which are on the record and have been annexed with the reply filed in May 2019.

42. Further, it is also submitted by the Corporate Debtor that it is stated in the instant application filed by the Applicant that an amount of Rs. 1,19,50,000/- is un invoiced which means that no invoices, whatsoever, was raised by the applicant for this amount. The Applicant issued only one invoice on 31.3.2018 of Rs. 4,30,50,000 to the Corporate Debtor without mentioning description of the materials and the Corporate Debtor already made an advance payment of Rs. 3,28,00,000/-.

43. Furthermore, it is also stated by the Corporate Debtor that for commissioning of the project, it had to procure the materials from the 3rd parties which were the essential equipments as per the EPC contract and amounted to essential ingredient for measuring the cost. Copy these bills have been annexed as ***Annexure – 2*** with this affidavit.

44. Written submissions have been filed by both the parties wherein they have made the same objections and contentions as mentioned in aforesaid paras of this order and therefore, the

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contents of the written submissions are not reiterated here for the sake of brevity.

FINDINGS OF THE TRIBUNAL

45. We have heard the arguments of Learned Counsels appearing for both Applicant Financial Creditor and Respondent Corporate Debtor and perused the pleadings, records, written submissions and exhibits/annexures marked thereto in respect of the present application. On perusal of the records, exhibits/annexures and after considering arguments advanced by respective Learned Advocates, the issue which is before us to be decided in respect of the present Application is whether there is any pre-existing dispute in this case or not, which will be having any bearing on the admission of this Application for the purpose of initiation of CIRP against the Corporate Debtor.

46. It is vehemently argued by the Ld. Counsel for the applicant Operational Creditor that as per the Schedule -2 of the EPC Contract, 10% of total amount of contract of Rs. 5,50,00,000/- coming to Rs. 55,00,000 was to be paid in advance upon execution of PPA Agreement between the Corporate Debtor and UPMRC. The applicant Operational Creditor received only Rs. 53,00,000 in instalments by 15.11.2017.

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47. Further, as per Schedule-2 of the EPC Contract, upon delivery of the Module Mounting Structure and other accessories by the Operational Creditor at the solar project site, the Respondent Corporate Debtor was under obligation to make a further payment of 10% of the agreed contract value of Rs. 5,50,00,000/- i.e., an amount of Rs. 55,00,000/. However, it received only sum of Rs. 50,00,000/- from the Corporate Debtor. Furthermore, upon delivery of modules, the Corporate Debtor was under an obligation to pay 60% of an agreed contract amount of Rs. 5,50,00,000/- coming to Rs. 3,30,00,000 but Corporate Debtor paid only Rs. 2,79,00,000/-. Upon delivery of inverters, the Corporate Debtor was required to make payment of Rs. 55,00,000 i.e. 10% of Rs. 5,50,00,000/- However, it failed to pay the said amount on due date. As submitted by the Operational Creditor, the supply of substantive materials at the Project Site was completed on 04.03.2018 by the Operational Creditor. However, the Corporate Debtor failed to make any payment upon delivery of the Inverters. Thus, out of the agreed amount of Rs. 5,50,00,000/-, an amount of Rs. 4,95,00,000/- (90% amount of total consideration) became due and payable but only Rs. 3,82,00,000/- was paid by the Corporate Debtor. Now, as the project has been commissioned and is fully operational as per

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the Operational Creditor, it has to be paid Rs. 5,50,00,000/-, the full contract amount but only Rs. 3,82,00,000/- has been paid so far, thus Rs. 1,68,00,000/- along with the applicable interest has become due and payable as operational debt to be paid to the Operational Creditor by the Corporate Debtor as it been shown in the Part IV filed by the Operation Creditor under section 9 application.

48. As submitted by the Operational Creditor, the Corporate Debtor has raised frivolous disputes in order to evade its liability under the EPC Contract. It is contended by the Operational Creditor that EPC Contract laid down the scope of work containing design, procurement, execution and commissioning of work according to which payment milestones were set out in Schedule-2 of the ECP Contract. It is further argued by the Ld. Counsel that the project was commissioned on 14.03.2018 as per the reply of RTI given by the UPMRC on 07.01.2021 in response to the RTI Application of the Applicant. The project was commissioned before the deadline i.e. 16.03.2018 stated by the UPMRC.

49. Therefore, in terms of the Schedule-2 of the EPC Contract, the Corporate Debtor was liable to pay the 100% amount as per the EPC Contract. Out of the 5,50,00,000/-, the Corporate Debtor had paid only, Rs. 3,82,00,000/- and has defaulted in payment

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of Rs. 1,68,00,000. In this regard, the Operational Creditor sent various emails dated 10.05.2018, 15.06.2018, 18.06.2018, 11.07.2018 and 13.07.2018 and 16.07.2018 demanding the payment of the outstanding amount.

50. In response to the emails sent by the Operational Creditor, the Corporate Debtor vide an email dated 23.05.2018 raised certain issues regarding the operation of the solar power plant which are reproduced below:-

"Forwarded message

From: Madhukar Jetley <sunrunsolarventures@gmail.com>

Date: Fri, Mar 23, 2018, 11:36 PM

Subject: Completion of Project under EPC contract

To: <ajeet mishra@suryaday.com>

EPC Company

M/S Suryaday Pvt Limited

New Delhi

In continuation of our earlier email dated 8th February 2018 It has been observed during the construction of one megawatt solar project at LMRC depot at Lucknow that you have yet not handed over the project to Sunrun Solar Ventures despite last date of completion of project passed almost two weeks ago as mentioned in your feedback despite receiving majority payment from our company very timely to conclude-much before achieving milestones as mentioned in EPC contract agreement and finishing touches of project which include cleaning system, Scada, testing of complete project are doing underperformance etc remaining jobs haven't been done despite several reminders to your earlier staff.on-site-now-missing and several informations requested haven't been provided by you to the undersigned company as demanded by IREDA the funding agency of the project giving project underperformance in generation of solar power much below

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the expected lines resulting in lower power generation and continued revenue losses to the project company despite several verbal requests made to you on handing over & completing the project and your project head is missing from site without any prior information to the undersigned company or its representative since last more than week technically all inverters are not performing also technically as per specifications of OE for which site inspections were done by you pre-inspection earlier before commencing ground work and discussing with LMRC on few occasions Proving dishonesty as per best practices followed in such contracts including no fresh quotations received for operations and maintaining of project despite requests besides work slowed earlier and stalled now deliberately on earlier occasions not to complete timely making project efficiently running as per technical MNRE specifications and all technical requirements of project as required as standard operating procedures with no activity happening on site presently There's no feedback from your company's end on the above mentioned issues

In view you are requested to immediately complete all remaining pending works for projects efficient running and provide all informations needed and asked which were requested to you and refused to provide by you so that next steps could be taken in the matter otherwise it shall be our compulsion to severe the contract and move further to complete remaining works in the project through other available technical sources so that performance of the project can be possible on expected MNRE lines and cleaning system can be done immediately with remaining jobs to be done as per MNRE specifications provided by you in your initial specifications submitted technically

Kindly respond to the matter stated above and earlier emails sent

Director

Sunrun Solar Ventures UP PVT Ltd Lucknow (UP)

India"

51. Pertaining to issues raised in emails regarding the capacity of modules and operation of solar power plant, the Operational Creditor has averred that all these allegations regarding the functioning of the solar power plant or supply pending from

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Operational Creditor was raised at the time of meeting held to ensure meeting of the deadline of the project.

52. The Applicant Operational Creditor issued a Demand Notice dated 22.10.2018 in Form 3 under Rule 5 under Section 8 of the Code to the Respondent Corporate Debtor i.e M/s Suryarun Solar Venture (UP) Pvt. Ltd. Lucknow demanding a payment of the unpaid operational debt with total amount of Rs. 1, 68, 00,000/- outstanding due being the Principal amount and in addition interest of Rs.13,57,808/- till 17/10/2018 @14.75% per annum, within the period of ten days. Due to non-receipt of notice of dispute u/s 8(2)(a) from the Respondent Corporate Debtor and any payment towards the Operational Debt, the Applicant filed this application on 20-02-2019. Further, it is also argued by the Ld. Counsel representing the Applicant that there is no pre-existing dispute between the parties.

53. Countering the allegations of the applicant Operational Creditor, the Corporate Debtor pointed out that there is a pre-existing dispute in respect of the performance of the solar power plant and inadequate supply of materials relating to the work done by the Operational Creditor as raised by the Corporate Debtor before the Operational Creditor vide emails dated 08.2.2018, 23.5.2018,

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13.4.2018, 15.5.2018, 03.7.2018 which are reproduced as below.

---------- Forwarded message ---------
From: **Madhukar Jetley** <sunrunsolarventures@gmail.com>
Date. Thu, Feb 8, 2018, 10:41 PM
Subject Payments & Progress
To Girish Narang <girish.narang@suryaday.com>, <accounts@suryaday.com>, <pooja.goel@suryaday.com>, <akshit.ahuja@suryaday.com>, sunrunsolarventures@gmail.com <sunrunsolarventures@gmail.com>

M/S Suryaday Pvt Ltd
Noida /New Delhi

This is draw your kind attention to the fact that it has been observed & that it has been found clearly during progress of the EPC Contract installation that several decisions have been taken unilaterally without keeping the undersigned company in loop after payments were made from 15th January 2018 onwards until 06th February 2018 regarding procurement of several Materials procured on behalf of Sunrun Solar Ventures without any knowledge of Brands Quantity and Prices paid through advances except Modules when project is closely reaching stage of completion & timelines to complete project is daily reducing .making situation quite alarming for undersigned company

It is therefore very humbly requested to kindly timely immediately seek prior approvals in writings very timely in order to purchase remaining materials immediately in order to complete remaining work and avoid any misunderstanding between EPC Contractor and undersigned company for smooth implementation of project when more then 90% of time has lapsed in different kinds of hurdles crossed already

It is therefore in interest of both EPC Contractor and undersigned company to resolve any issues pending regarding unapproved payments made after and during above period mentioned above to arrive at a stage where process can be competed when payments were made for specific jobs which haven't found any meniion in statement of payments provided yesterday to undersigned company unacceptable to any company's directors whose approvals are necessary prior to making payments received from undersigned company '

You are requested to kindly look into the matter and immediately & revert so that work can not be stalled due to above and resolved through revised payments statement which clearly doesn't matches verbal discussions with one of your persons working closely with the project since beginning of commencment of installation work

Director
Sun-Run Solar Ventures UP Private Limited
Lucknow

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Fwd: Completion of Project under EPC contract

SunRun Solar Ventures <sunrunsolarventures@gmail.com> Tue, Apr 30, 2019 at 7:46 PM
To: raghavnayar9@gmail.com

---------- Forwarded message ---------
From: **Madhukar Jetley** <sunrunsolarventures@gmail.com>
Date: Fri, Mar 23, 2018, 11:36 PM
Subject: Completion of Project under EPC contract
To: <ajeet.mishra@suryaday.com>

EPC Company
M/S Suryaday Pvt Limited
New Delhi

In continuation of our earlier email dated 8th February 2018 It has been observed during the construction of one megawatt solar project at LMRC depot at Lucknow that you have yet not handed over the project to Sunrun Solar Ventures despite last date of completion of project passed almost two weeks ago as mentioned in your feedback despite receiving majority payment from our company very timely to conclude much before achieving milestones as mentioned in EPC contract agreement and finishing touches of project which include cleaning system, Scada , testing of complete project are doing underperformance etc remaining jobs haven't been done despite several reminders to your earlier staff on site now missing and several informations requested haven't been provided by you to the undersigned company as demanded by IREDA the funding agency of the project giving project underperformance in generation of solar power much below the expected lines resulting in lower power generation and continued revenue losses to the project company despite several verbal requests made to you on handing over & completing the project and your project head is missing from site without any prior information to the undersigned company or its representative since last more than week technically all inverters are not performing also technically as per specifications of OE for which site inspections were done by you preinspection earlier before commencing ground work and discussing with LMRC on few occasions Proving dishonesty as per best practices followed in such contracts including no fresh quotations received for operations and maintaining of project despite requests besides work slowed earlier and stalled now deliberately on earlier occasions not to complete timely making project efficiently running as per technical MNRE specifications and all technical requirements of project as required as standard operating procedures with no activity happening on site presently There's no feedback from your company's end on the above mentioned issues

In view you are requested to immediately complete all remaining pending works for projects efficient running and provide all informations needed and asked which were requested to you and refused to provide by you so that next steps could be taken in the matter otherwise it shall be our compulsion to severe the contract and move further to complete remaining works in the project through other available technical sources so that performance of the project can be possible on expected MNRE lines and cleaning system can be done immediately with remaining jobs to be done as per MNRE specifications provided by you in your initial specifications submitted technically

Kindly respond to the matter stated above and earlier emails sent

Director
Sunrun Solar Ventures UP PVT Ld
Lucknow (UP)
India

ATTESTED
CH. YADAGIRI
B.Com, LL.B
ADVOCATE & NOTARY
MACHA BOLARAM

-Sd- -Sd-

Fwd: Project Operations

SunRun Solar Ventures <sunrunsolarventures@gmail.com> Tue, Apr 30, 2019 at 7:45 PM
To: raghavnayar9@gmail.com

---------- Forwarded message ---------
From: **Madhukar Jetley** <sunrunsolarventures@gmail.com>
Date: Fri, Apr 13, 2018, 7:37 PM
Subject: Project Operations
To: <ajeet.mishra@suryaday.com>, <karan.tilawat@suryaday.com>, <akshit.ahuja@suryaday.com>
Cc: <praveensrivastava876@gmail.com>

Mr Ajeet Misra
Suryaday Pvt Ltd
New Delhi

This is to inform you that I have despite several requests we have not being able to get any concrete response from Suryaday Pvt Ltd EPC Contractor's as to how the daily operations shall be conducted of the one megawatt solar plant of Lucknow metro and also to how the billing procedure shall be conducted by our staff looking after the operations on day to day basis to do billing to Lucknow metro regularly uninterruptedly as per kWh units supplied daily as per records maintained by our staff at site

It is therefore urgently requested to kindly inform Mr Praveen Srivastava Electrical Engineer on 9044932942 posted at site understand about all workings of solar project including battery modules and invertors operations beside other technical materials because your no responsible staff is Present at all since last more than a month and everyone is missing from site since long without any responses

The cleaning system including pipes etc are not installed properly water supply pipes are missing and also several modules have been uprooted during storm causing damage to modules which has to be properly fixed cable trays not completely fixed yet including SCADA system uninstalled for online monitoring and we had to purchase water lifting crompton greaves Motors but water lifting is not happening since more than a month causing dirtiness to modules lowering generation capacity

Besides several losses have been caused to generation in past several Days due to all these reasons mentioned above on part of EPC contractor

You are requested to Kindly cooperate with Mr Praveen Srivastava Electrical Engineer to compete all these basic points mentioned above and send some responsible persons on site immediately without delays to explain the gaps in operations being caused on the solar project so that proper generation takes place who shall update daily status of site operations at Lucknow metro site and kindly clarify to him immediately about the working of the site which is duty of EPC contractor which does construction of project and Suryaday has failed and not done so since more than a month since trial started of project on 18th March 2018

Warm Wishes

Director
Sunrun Solar Ventures UP PVT Ld
Lucknow (UP)
India

ATTESTED
CH. YADAGIRI
B.Com., LL.B.

-Sd- -Sd-

Fwd: Updates of LMRC Project

Mon, May 6, 2019 at 9:57 PM

Sunrun Solar <sunrunventure@gmail.com>
To: Sunrun Solar Venture U P P Ltd <sunrunsolarventures@gmail.com>, kalpana140293@gmail.com, raghavnayar9@gmail.com

Director
Sun Run Solar Ventures Private Limited
C-402,Nagarjuna Apartment
Mayur Vihar
New Delhi-110091
Email.sunrunsolarventures@gmail.com

---------- Forwarded message ---------
From: **Sunrun Solar** <sunrunventure@gmail.com>
Date: Wed, May 23, 2018 at 8:43 AM
Subject: Re: Updates of LMRC Project
To: Manish Bhatnagar <manish.bhatnagar@suryaday.com>
Cc: Girish Narang <girish.narang@suryaday.com>, Ajeet Mishra <ajeet.mishra@suryaday.com>

Suryaday Pvt Ltd
Noida UP

There's no output generation happening as should happen to 1 MW solar project inverters are closed since Long periods & 70% strings are not working despite complaints given to Suryaday since beginning which is mentioned in EPC agreement as contractors responsibility & liability to perform as per performance standards of solar plant capacity plus cleaning systems water lifting motors were purchased only by Sunrun not in scope of Sunrun Solar Ventures P Ltd work was left midway unattended irresponsibly by contractor staff therefore as since months repeatedly informed on multiple occasions by Sunrun site staff first immediately without any further losses and delays ensure that performance of plant improves following and Preinspection of site was done only by contractors representatives several months before any commencement of work started regarding every cable etc etc so can't be now raised out of scope on Sunrun which any further issues can be discussed without which contractors performance which is not yet as committed or claimed by Suryaday Pvt Ltd verbally or in email as the machinery cables and other equipment's were all selected by contractor alone & plant is continuously under performing below capacity for which proper evidence shall be needed from contractor and responsibility lies only on contractor alone for improving its performance as all payments were made very timely without any completing contractors scope of work till today which first has to be completed for on time performance of 1MW capacity performed output first without any unacceptable excuses which have been coming

Warm Wishes

Director
Sunrun Solar Ventures Pvt Ltd
Nagarjuna Apartments Mayur Vihar
New Delhi -110096

On 15-May-2018, at 8:06 PM, Manish Bhatnagar <manish.bhatnagar@suryaday.com> wrote:

Annexure No 8

Dear Sh. Jetley Ji,

Further to our earlier discussions, we have now perfected the generation of the solar plant and the plant is running at optimum level. We had committed this and have done our main part. We are continuing the balance work which is mostly the finishing work. Cleaning system has also been installed.

I think it is important for us to get the balance payment to finish off the work. We are still left with major payment and our working capital is stuck in the project. We request you to please remit at least part of the payment so that we can bear the day to day expenses and provision for balance material, if any.

Also, we await your instructions on the cable to be laid down by LMRC for connecting the inverter which is currently running at partial capacity.

Regards,
Manish Bhatnagar

ATTESTED
CH. YADAGIRI
B.Com.,LL.B

54. The contentions raised by both the parties regarding pre-existing dispute, it is relevant to mention here that once the Operational Creditor delivers a demand notice of unpaid operational debt, the Corporate Debtor is under an obligation to bring to the notice of the Operational Creditor any payment of unpaid operational debt

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(S.8 (2) (b)) or existence of dispute between the parties (S.8(2)(a)) within a period of 10 days of the receipt of notice or copy of invoice. In this case, no such notice of dispute has been raised by the Corporate Debtor.

55. However, a pre-existing dispute can be considered during Section 9 proceedings, even if not initially raised under Section 8(2)(a) but during the course of Section 9 proceeding, it is to be seen by the adjudicating authority that the dispute must be a genuine one that had arisen before the Section 8 demand notice was issued and its existence has to be only confirmed but not adjudicated upon its merits. The burden is on the Corporate Debtor to provide evidence to show that the dispute was genuine and pre-existing.

56. This position of law has been confirmed by the Hon'ble NCLAT in its decision in case of ***Greymatter Entertainment Private Limited vs Pro Sportify Private Ltd dated 09.02.2023*** holding that even if the Corporate Debtor does not reply to the statutory demand notice u/s 8 issued by the Operational Creditor, it is not precluded from raising the question of pre-existing dispute or establishing by way of reply to the applicant under section 9 that there is a pre-existing dispute between the

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parties. The relevant part of this judgment is reproduced as under: -

"--------------

***13**. It is observed from the aforenoted Sections that neither Section 8 nor Section 9 of the Code indicate that in event Reply to Notice was not filed within 10 days, the 'Corporate Debtor' is precluded from raising the question of dispute or pleading that there or no amount 'due and payable', the 'Corporate Debtor' is not prevented from establishing by way of a Reply and relevant documents, any 'Pre-Existing Dispute' or paid 'Operational Debt'. We place reliance of the Judgement of this Tribunal in '**M/s. Brandy Realty Services Ltd.' Vs. 'M/s. Sir John Bakeries India Pvt. Ltd**.', where this has been considered in detail:*

"12. ... Section 8(2) of the Code provides that the corporate debtor shall, within a period of ten days of the receipt of the demand notice or copy of the invoice mentioned in sub-section (1) bring to the notice of the operational creditor- (a) existence of a dispute. Section9(1) of the Code provides that 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. Section 8(2) when read with Section 9(1), it is clear that Section 9(1) enables the Operational Creditor to file Section 9 application if no payment has been received by the Operational Creditor form Corporate Debtor or no notice of the dispute under sub-section (2) of section 8 has been received. 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.

13. Our above conclusion is further fortified then we look into the scheme of Section 9(5)(ii) which provides that the Adjudicating

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Authority can reject the Application if-"notice of dispute has been received by the Operational Creditor or there is a record of dispute in the information utility". The above provision indicates that even if no notice of dispute has been received, and there is record of dispute in the Information Utility the Application under Section 9 is to be rejected by the Adjudicating Authority. The above provision clearly indicates that even in absence of notice of dispute, Adjudicating Authority can reject the Application if there is record of dispute in the Information Utility. It goes without saying that record of dispute in the Information Utility can very well be pointed out by the Corporate Debtor before the Adjudicating Authority when notice is issued under Section 9. 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 preexisting 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 pre-existing dispute..."

(Emphasis Supplied)"

57. It is further recently held by the Hon'ble NCLAT in the matter of ***Anil Kumar Seth v. Valplast Technologies Pvt. Ltd. and Anr., (2025) ibclaw.in 399 NCLAT*** that even if no reply is filed to notice issued under Section 8 of IBC, NCLT is obliged to look into the material produced before it by Corporate Debtor for proving that there was a pre-existing dispute between the parties before

-Sd- -Sd-

the issuance of demand notice. The relevant extract of the order is reproduced below: -

"9. We are of the considered opinion that finding of the Learned Tribunal is not acceptable as it is contrary to the well settled law that even if no reply is filed to the notice issued under Section 8 of the Code, the court is obliged to look into the material produced before it by the Corporate Debtor for proving that there was a pre-existing dispute between the parties before the issuance of notice under Section 8 of the Code."

58. After considering the above position of law as laid down by the Hon'ble NCLAT in respect of examining the pre-existing dispute, we proceeded to examine the details of emails produced before us by the Corporate Debtor written to the Operational Creditor in respect of the deficiencies in the project work executed by the Operational Creditor to ascertain whether any pre-existing dispute genuinely existed or not in terms of the provision of the Code.

59. The dictum laid down in respect of ascertaining the existence of pre-existing dispute by the Hon'ble Supreme Court in the case of ***Mobilox Innovations (P) Ltd. v. Kirusa Software (P) Ltd., (2018) 1 SCC 353*** has also been followed by Hon'ble NCLAT in catena of judgments wherein it is clearly held that the existence of the dispute must be pre-existing i.e., it must exist before the receipt of the demand notice under section 8. In the absence of any existence of a dispute between the parties or the record of

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the pendency of a suit or arbitration proceeding filed before the receipt of the demand notice, the application cannot be rejected under section 9 on the ground of pre-existing dispute and is required to be admitted as per section 9(5)(i). Further, it is to be ensured that the said dispute should not rest on weak defences or just being a moonshine and unsupported by material evidence. An 'Adjudicating Authority' is to be subjectively satisfied that there exists a 'Dispute' and the same is not a frivolous or vexatious one while rejecting the section 9 application u/s 9(5)(ii).

60. In this case, we have found that before the issuance of demand notice by the Operational Creditor on 22.10.2018 which was delivered to the Corporate Debtor on 27.10.2018, several emails were exchanged between both the parties starting from February 2018 in respect of deficiencies in supply of materials and dispute over completion of the project and its successful commissioning by the Operational Creditor.

61. Due to such ongoing dispute between parties on the issue of deficiencies and satisfactory completion of the project as highlighted in the emails reproduced in aforesaid paras of this order, the Corporate Debtor withheld the payment of any further amount to the Operational Creditor after paying Rs.

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3,82,00,000/- in advance. In order to release further amount, the Corporate Debtor demanded from the Operational Creditor the details of material procured and works executed and services rendered by way of raising of the invoices by the Operational Creditor for the full project work of Rs. 5,50,00,000/-. As vehemently argued by the Ld. Counsel of the Corporate Debtor, no such details of materials supplied and services rendered as per the EPC contract have been provided by the Operational Creditor despite being demanded repeatedly by the Corporate Debtor for making the balance payment after satisfying itself about the contractual project work having been executed to the full extent of Rs. 5,50,00,000/-. On insistence of the Corporate Debtor, when a partial invoice of Rs. 4,30,50,000/- was issued by the Operational Creditor on 31.03.2018, no such details of materials supplied and works executed have been mentioned therein and for balance amount of the contractual work of Rs. 1,19,50,000/-, no invoice so far has been issued.

62. In view of the above dispute between the Corporate Debtor and the Operational Creditor on the issue of completion of the contractual project work to the satisfaction of the Corporate Debtor and inability of the Operational Creditor to provide the details of the materials supplied and works done relating to the

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said contractual project work, the Corporate Debtor has not made any payment further taking a view that the advance payment made by it to the extent of Rs. 3,82,00,000/- covers the entire payment for the material supplied and work executed by the Operational Creditor and any further payment will be done only when the required details would be furnished by the Operational Creditor which the Operational Creditor has not provided so far, and hence the Corporate Debtor denied any liability for payment to the Operational Creditor in absence of any such details provided by the Operational Creditor as demanded by the Corporate Debtor.

63. To substantiate its allegations regarding pre-existing dispute, the Corporate Debtor has relied on the emails dated 08.02.2018, 23.03.2018, 13.04.2018, 23.05.2018 and 09.7.2018, regarding the procurement of material for completion of project in a timely manner, functioning of cleaning system, supply of water pipes, fixing of cable trays, battery modules and invertor operations which is causing delay in generation of power plant.

64. We find that the issues raised by the Corporate Debtor with respect to deficiencies in carrying out the project work has started when an email dated 8th February 2018 has been sent by the Corporate Debtor expressing dissatisfaction on procurement

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of several materials by the Operational Creditor without discussing and obtaining approval of the Corporate Debtor and it has been requested to seek prior approvals in writings in order to purchase remaining materials to avoid any misunderstanding between “EPC Contractor” i.e. the Operational Creditor and “the undersigned” i.e. the Corporate Debtor for smooth implementation of the project when more than 90% of time has elapsed in different kinds of hurdles crossed already. In this letter regarding payments for the project work also, it is mentioned that after making unapproved payments earlier, now payments will be made after purchase of materials made with the approval of the Corporate Debtor. As the request made by the Corporate Debtor has not been adhered to by the Operational Creditor, a detailed email dated 23rd March 2018 has been sent raising various issues with respect to materials and equipments supplied and their unsatisfactory operation as well as certain works still remained unfinished pointing out that finishing touches of project which include cleaning system, SCADA, testing of complete project are doing underperformance etc remaining jobs haven't been done despite several reminders to earlier staff-on-site- of the Operational Creditor now-missing and several information requested haven't been provided by the

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Operational Creditor to the Corporate Debtor as demanded by IREDA the funding agency of the project, giving project underperformance in generation of solar power much below the expected lines resulting in lower power generation and continued revenue losses to the Corporate Debtor despite several verbal requests made to the Operational Creditor on handing over & completing the project. Further, it is mentioned that the project head of the Operational Creditor is missing from the site without any prior information to the Corporate Debtor or its representative since last more than week, technically all inverters are not performing also technically as per specifications of OE for which site inspections were done by the Operational Creditor earlier before commencing ground work and discussing with LMRC on few occasions. Looking to such detailed email of the Corporate Debtor sent at the time when the project was expected to have been completed and commissioned, clearly shows that the Corporate Debtor was not fully satisfied with the work done by the Operational Creditor for which it raised various issues/concerns in this email but these issues/concerns were not addressed by the Operational Creditor, and therefore certain emails dated 13.04.2018, 23.05.2018 and 03.07.2018 were further sent pointing out unsatisfactory operation of the solar

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plant installed by the Operational Creditor and certain works were not completed such as the cleaning system including pipes etc are not installed properly, water supply pipes are missing and also several modules have been uprooted during the storm causing damage to modules which have to be properly fixed, cable trays not completely fixed yet including SCADA system uninstalled for online monitoring and the Corporate Debtor had to purchase water lifting Crompton Greaves Motors as water lifting was not happening since more than a month causing dirtiness to module lowering generation capacity etc.

65. We find that the Corporate Debtor sent series of emails to Operational Creditor as it was not satisfied with the project work done by the Operational Creditor as discussed above and the Operational Creditor in turn instead of addressing these issues took the view that its responsibility of EPC contract is over after the project is commissioned by it and all the problems faced by the Corporate Debtor are required to be addressed by it alone and started sending reminders vide emails dated 10.5.2018, 15.6.2018, 18.6.2018, 11.7.2018 and 13.7.2018 and 16.7.2018 for payment of the outstanding debt as project in its view was commissioned on 14.3.2018 before the due date i.e 16.03.2018 and all the supplies of materials was completed as per the EPC

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Contract and as per clause 2 r/w Schedule 2 of the EPC Contract 100% payment was to be made upon commissioning of the Project.

66. As regards the dispute on completion of the project and its successful commissioning, both parties relied upon the information obtained from UPMRC through RTI. The Operational Creditor relied upon the letter dated 07.01.2021 of UPMRC as per which the commercial operation of the solar power plant installed by the Operational Creditor under EPC contract has started from 14.03.2018 and subsidy has been released, and hence it is emphasised by the Operational Creditor that project was successfully commissioned by it on 14.03.2018. However, the Corporate Debtor obtained further clarification from UPMRC under RTI regarding the completion of the project and its successful operation and in this regard, it furnished the letter dated 12.02.2021 of UPMRC stating that only 90% of subsidy has been released and balance subsidy amount has not been released due to leftover works like remote monitoring system, cable dressing, manual and documents etc. and one inverter is not working since July 2019. Therefore, on the above information provided by the UPMRC, it has been emphasised by the Corporate Debtor that the project was not fully completed by the

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Operational Creditor resulting into disbursement of subsidy to it only to the extent of 90% and it is also not running satisfactorily due to deficiency in materials supplied for which no details and documents were provided by the Operational Creditor to enable them to run them properly.

67. After taking into consideration all the arguments of the Operational Creditor as well as the Corporate Debtor as discussed above, we find from the above extracts of emails exchanged between the Operational Creditor and Corporate Debtor that there is existence of dispute pertaining to the procurement, design, construction and commissioning of the project executed for installing the solar plant for UPMRC. There is clear evidence of existence of dispute regarding quality of materials supplied, completion of plant and its satisfactory operation after commissioning. Though with the letter of UPMRC, it has become clear that plant has been commissioned on 14.03.2018 but it is not completed fully as certain materials are still not supplied and there are operational problems also due to non-supply of manual and documents of materials supplied which the Corporate Debtor kept on constantly demanding by sending series of emails before the completion of plant and its commissioning. The issue of not providing the details of material

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supplied by the Operational Creditor was raised before us also during the hearing but the Operational Creditor on our specific query in this regard replied that in EPC contract, such material wise details are not possible to be provided. Therefore, we find that there is clear *pre-existing* dispute as regards the supply of material which is causing operational problems for the solar plant installed by the Operational Creditor resulting into loss to the Corporate Debtor and also the full subsidy amount not being released to it. Such *pre-existing* dispute was raised by the Corporate Debtor, by sending series of emails from February 2018 before a demand notice u/s 8 dated 22.10.2018 was issued by the Operational Creditor.

68. Under the Insolvency and Bankruptcy Code (IBC), a court or tribunal determines only the existence of a *pre-existing dispute*, not the merits of that dispute. Such dispute must have existed before the demand notice was issued. The role of the adjudicating authority is to assess if a genuine dispute exists based on the evidence presented, which must be bona fide and not frivolous. If any such dispute is found to be in existence, its adjudication cannot be done in IBC but it needs to be addressed separately in a different forum as in the present case, it would be required to be addressed by the Arbitral Tribunal as per clause

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19.2 and 19.3 of the EPC Contract dated 29.11.2017. Under IBC, if a genuine *pre-existing* dispute is found to be in existence while considering the section 9 Application, it has to be rejected as per the provision of section 9(5)(ii) as it has been held in catena of judgments pronounce by the Hon'ble NCLAT after the judgment of Hon'ble Supreme Court in case of ***Mobilox Innovations (P) Ltd. v. Kirusa Software (P) Ltd., (2018) 1 SCC 353.***

69. In the case of ***Law & Kenneth Saatchi & Saatchi Pvt. Ltd. v. Patanjali Paridhan Pvt. Ltd.,*** ***(2024) ibclaw.in 739***, confirming the decision of this tribunal on the issue of deciding about the pre-existing dispute based on series of emails exchanged between Corporate Debtor and Financial Creditor before the issuance of section 8 notice, as regards the quality of materials supplied and services rendered and because of such ongoing dispute, full payment not made by the Corporate Debtor after paying substantial amount as advance, the Hon'ble Appellate Tribunal held as under:-

"… 17…..

iii. The various emails exchanged as well as the letters from legal department of the Corporate Debtor and its response by the legal representative of the Operational Creditor is evidence that there was a genuine and real dispute regarding issue of NOC by the Operational Creditor regarding TVC. These emails and letters are prior to the issue of notice under Section 8 of the IBC, 2016.

…"

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70. In the aforesaid cited judgements, it is clearly held that correspondence like emails and letters exchanged between the Corporate Debtor and the Operation Creditor before issuance of the Section 8 demand notice can be considered to ascertain the existence of any pre-existing dispute between the parties. The court may look at whether the emails clearly show a dispute over the debt amount, quality of goods, or other terms, even if the Operational Creditor denies the existence of any dispute in their response.

71. In view of our findings as discussed in aforesaid paras and considering the above judgment of the Hon'ble NCLAT in respect of an order passed by this tribunal, we find that there is a *pre-existing* dispute which is evident from the series of emails exchanged between the Corporate Debtor and Operational Creditor regarding the materials supplied, completion and commissioning of the project being not satisfactory resulting into Operational problems and subsequently, issue of payments raised by the Operational Creditor in various emails sent by it but denied by the Corporate Debtor taking the plea of project being not complete. As being an Adjudicating Authority under IBC while dealing with section 9 application, we cannot go into the merits as to whether project was fully and satisfactorily

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completed or not and whether all the materials were supplied as per the requirements of the project or not but the emails discussed by us in foregoing paras including the letters obtained by parties from UPMRC under RTI clearly demonstrate that there is dispute between parties on these issues which existed prior to much before the issuance of Section 8 notice by the Operational Creditor. The factum of their being a per-existing dispute goes beyond any doubt and therefore, the present petition under section 9 is not maintainable. We therefore, dismiss the Present Petition filed under section 9 of the IBC, taking into account the provision of section 9(5)(ii).

72. Accordingly, the Application **CP (IB) No.91/ALD/2019** filed by the Operational Creditor u/s 9 of the Insolvency & Bankruptcy Code, 2016 is hereby dismissed. Ordered Accordingly.

-Sd-
Ashish Verma
Member (Technical)

-Sd-
Praveen Gupta
Member (Judicial)

Date:- 11.11.2025