

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

**Company Appeal (AT) (Insolvency) No. 1320 of 2025**

**[Arising out of the Impugned Order dated 09.05.2025 passed by the Adjudicating Authority, National Company Law Tribunal, Chandigarh Bench in CP(IB)/291/CHD/HRY/2023]**

**IN THE MATTER OF:**

**SPAN ENGINEERS**

(Sole Proprietorship) rep. by its Proprietor  
Cbandrahasan Senthilkumar

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**...Appellant(s)**

**Versus**

**PRAGATI INFRA AND ENGINEERING LLP**

Plot No. 31P Sector-38, NA GURGAON

Gurgaon Haryana 122001

LLPJN: AAJ6083

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**...Respondent(s)**

**Present:**

**For Appellant** : Mr. S. Vedhavel, Advocate.

**For Respondents** : None

**ORDER**  
**(Hybrid Mode)**

**Per: Barun Mitra, Member (Technical)**

The present Appeal, preferred under Section 61 of the Insolvency and Bankruptcy Code, 2016 ('IBC' in short) arises from the Impugned Order dated 09.05.2025 (hereinafter referred to as the '**Impugned Order**') passed by the Adjudicating Authority (National Company Law Tribunal, Chandigarh Bench) in CP(IB)/291/CHD/HRY/2023. By the said impugned order, the Adjudicating Authority dismissed the Section 9 application filed by the Appellant/Operational Creditor-Span Engineers, seeking initiation of the

Corporate Insolvency Resolution Process (**CIRP** in short) against the Respondent/Corporate Debtor-Pragati Infra and Engineering LLP. Being aggrieved by the dismissal of its Section 9 application, the Appellant has come up in appeal.

**2.** Coming to the brief factual matrix of the present case from the material placed on record, we notice that the Appellant–Operational Creditor was engaged by the Respondent–Corporate Debtor for execution of certain civil works including supply of goods and services pursuant to a work order dated 01.05.2020. The Appellant claimed to have satisfactorily executed the assigned works and raised three invoices dated 07.06.2020, 05.01.2021 and 09.02.2021 aggregating to Rs. 1,26,89,529.34/- against which the Corporate Debtor made partial payments against the first and second invoices. However, the Appellant claiming that in accordance with the payment terms under the work order, the entire payment should have been made within six months from the date of the last invoice i.e. 09.02.2021, which not having been done, this led to unpaid operational debt which had become due and payable following which the Appellant issued a demand notice on 01.04.2023 under Section 8 of the IBC seeking payment of the operational debt. The Corporate Debtor replied to the demand notice on 12.04.2023 raising certain disputes. Also, another communication dated 05.05.2023 was issued by the Appellant regarding reporting of default by the Corporate Debtor with the National E-Governance Services Limited (**NeSL** in short) which the Corporate Debtor claimed to have been disputed. The Appellant not having received any further payment, filed an application under Section 9 of the IBC claiming an

operational debt of Rs. 1.26 Cr.. The Corporate Debtor filed its reply thereto on 14.02.2024 objecting to the Section 9 application by submitting that the claim was not due and payable for the operational debt required reconciliation of accounts; that invoices submitted by the Appellant were unsigned and fabricated; that there were statutory compliance issues relating to Provident Fund and GST; that the alleged default was barred under Section 10A; that the claim did not satisfy the minimum threshold under Section 4 and that the NeSL status also reflected the claim as disputed. The Adjudicating Authority passed the impugned order on 09.05.2025 dismissing the Section 9 application on grounds of pre-existing dispute; non-fulfilment of the threshold requirement and applicability of Section 10A of the IBC. Aggrieved with the findings of the Adjudicating Authority, the present appeal has been preferred by the Appellant.

**3.** Making submissions on behalf of the Appellant, Shri S. Vedhavel, Learned Counsel contended that the Adjudicating Authority committed a grave error in rejecting the application under Section 9 of the IBC, 2016 though the existence of operational debt and default had been conclusively established by the Appellant supported by cogent documentary evidence like work order, invoices, delivery challans, transport records and email acknowledgments which all evidenced the supply and acceptance of goods and services by the Corporate Debtor. Submission was pressed that the operational debt arose from a continuous running account maintained between the two parties and the liability of the Corporate Debtor had crystallised upon non-payment of the third invoice, resulting in a cumulative

outstanding operational debt of Rs. 1.26 Cr which clearly met the threshold limits prescribed under Section 4 of the IBC. It was further contended that the date of default had been correctly determined in terms of the payment conditions stipulated in the work order. The unpaid dues under all invoices formed part of a continuing operational liability which had to be considered cumulatively for the purpose of determining quantum of default and maintainability of the Section 9 application from the threshold perspective. It was vehemently contended that the Adjudicating Authority had erred in placing undue reliance on the contention of the Corporate Debtor with respect to discrepancies in the record submitted before the Information Utility while overlooking the fact that the requirement of filing of such record is directory in nature and not mandatory. Even if there were any errors in the reporting made to NeSL, the same could not have defeated the substantive claim of the Appellant, especially when the operational debt and default stood well substantiated. Moreover, partial payments were made by the Corporate Debtor without raising any specific and substantiated dispute prior to the Section 8 demand notice which clearly shows that the liability was acknowledged by the Corporate Debtor and there was no genuine pre-existing dispute surrounding the operational debt. It was erroneous on the part of the Adjudicating Authority to only consider one invoice while excluding the previous two invoices while applying provisions of Section 10A of the IBC at a time when supplies had been made in respect of those invoices during the period which fell outside the Section 10A period. It was submitted that under the settled legal position governing proceedings under Section 9 of the IBC,

only a real and bona fide dispute existing prior to the issuance of the demand notice can defeat the claim of an Operational Creditor. The Appellant further argued that there was no genuine or pre-existing dispute raised by the Corporate Debtor prior to issuance of the statutory demand notice on 01.04.2023 and the alleged dispute raised by the Respondent was a mere afterthought devised solely to defeat the insolvency proceedings. When all the statutory requirements under Section 9 stood fully satisfied, including substantiation of the existence of operational debt and occurrence of default, which debt default amount surpassed the prescribed monetary threshold issuance; their having been proper issuance and delivery of a valid demand notice and absence of any pre-existing dispute, the Adjudicating Authority could not have dismissed the Section 9 application by adopting an unduly technical approach which was contrary to the object and scheme of the IBC. Assailing the impugned order, it was contended that the same was legally unsustainable and therefore liable to be set aside.

**4.** We have heard at length the Ld. Counsel for the Appellant and perused the records carefully.

**5.** We have already captured in details the submissions of the Appellant. It is the case of the Appellant that the operational debt which was due and payable by the Corporate Debtor was the cumulative aggregate of running account invoices dated 07.06.2020, 05.01.2021 and 09.02.2021 amounting Rs. 1.26 Cr. It was also held that these invoices pertained to a period beyond the Section 10A of the IBC and therefore met the threshold prescription. It was also contended that existence of these invoices was never challenged prior

to issue of Section 8 demand notice and there was sufficient material placed on record by the Appellant by way of work orders, delivery challan and transport receipt etc. which clearly established the supply of goods and the acknowledgment of debt by the Corporate Debtor which had been received without any demur or protest. Hence the dismissal of the Section 9 application on grounds of pre-existing dispute; non-fulfilment of the threshold requirement and applicability of Section 10A of the IBC was erroneous.

**6.** When we look at the impugned order, we find that that the Adjudicating Authority has interalia dwelled on the question as to whether the operational debt was disputed by the Corporate Debtor and also whether the Section 9 application was barred in terms of Section 10A and failed to meet the threshold restrictions.

**7.** Coming to the issue of pre-existing dispute between the parties, we find that in the impugned order, the Adjudicating Authority has taken notice at para 13.3 that payment terms at clause 1 clearly provided that 90% against the RA bills were to be paid from the date of approval of the bill and that these payments were to be made when both parties had mutually agreed to the bills. The Adjudicating Authority further noticed that in the present case there is nothing to show that the amounts claimed against these bills had been reconciled or that the amounts were mutually agreed upon by both the parties. Furthermore, objections which had been raised by the Corporate Debtor on the bills raised by the Appellant have been extracted in details in the same para of the impugned order by the Adjudicating Authority. Thus, when the veracity and tenability of the invoices itself remained under dispute,

which dispute has also been clearly raised by the Respondent in their reply to the Section 8 demand notice, the Adjudicating Authority did not falter in holding that these bills cannot be relied upon to establish the debt outstanding between the parties.

**8.** At this stage, we may draw our attention to the Reply of the Corporate Debtor to the Section 8 Demand Notice. Para 12 of the said reply contains a summary of the objections raised by the Corporate Debtor which is as extracted hereinunder:

*“12. Alternatively, without prejudice to the facts set forth hereinabove, we dispute your claim and the tenability of your notice on the following grounds:*

- i. The services supplied by you were defective/inferior/substandard and did not conform to the specifications agreed upon between us.*
- ii. You have failed to duly perform your obligations under the Work Order and have breached the terms and conditions thereof.*
- iii. You have charged us excess amounts over and above the legitimate amounts and have levied unjustified interest thereon.*
- iv. You have not provided us with proper invoices/bills/supporting documents for your claim.*
- v. You have not accounted for the legitimate payments/adjustments/set-offs made by us against your claim.”*

Each of the above contentions have also been separately and elaborately dealt by the Corporate Debtor.

**9.** From the above reply, it is amply clear that the invoices raised by the Appellant had been clearly disputed by the Corporate Debtor including breach of the terms of the work order and failure to comply with statutory obligations.

When we look at paras 5 and 8 of the said reply, we find that the Respondent also pointed out that the Operational Creditor had failed to deposit GST dues. At para 9 therein, the Corporate Debtor also submitted that the Appellant had defaulted in discharging statutory payments under labour laws. Para 10 also refers to deductions made towards retention money by them in accordance with the work order and that the same was repayable only after ascertainment of full and final settlement amount. There is no evidence placed on record by the Corporate Debtor to show that the bills had been accepted by the Respondent. Clearly there existed a serious pre-existing dispute between the parties regarding reconciliation of accounts. Given this backdrop, the Adjudicating Authority committed no error in holding that as the account between the parties had not been finally settled in accordance with the payment terms, no operational debt had crystallised or come into existence.

**10.** This brings us to the information submitted by the Appellant in the Information Utility, namely NeSL, regarding their claim against the Corporate Debtor. The Appellant while making submissions before us contended that the Corporate Debtor had falsely alleged that the default recorded with the Information Utility was disputed, whereas in fact NeSL had merely followed the statutory procedure under Regulation 21 of the IBBI (Information Utilities) Regulations, 2017 by issuing notice to the debtor for authentication of the default and the Corporate Debtor was deliberately mischaracterising the same to create a false impression of dispute. An opportunity was therefore given by us to the Appellant to file the NeSL report by means of an additional affidavit, which has now been placed on record which is as reproduced below:

## Form-C Debtor Authentication (Corporate)

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Below Information as on Business Date : 05/05/2023

### Submission Details

Unique Debt Identifier ABGPS4588J_PIEL/LOGOS/BA NGLORE/19-20/0107	Submission ID 1	Submitted by Senthil Kumar
Submitted Date & Time 2023-05-05 13:23:46.0	Submission Type Default	Information as on 05/05/2023

### Authentication Status

Party Name	Relationship	User Id	Status	Date & Time of Authentication
Pragati Infra & Engineering LLP	debtor	2010722	DISPUTED	17/05/2023 16:05:02

Reason For Dispute : Pre-existing Dispute , Pre-existing Dispute , Pre-existing Dispute ,  
Remarks - Dear NeSL Team, With reference to the subjected demand notice, we already replied on 09-May-2023 by mail & registered post to Mr. Senthil Kumar. So I request you to please don't consider any baseless claim of any operational debt as alleged in the notice. The assertions made by you in the notice is based on false and frivolous grounds with mala fide intention to extract money from us under sheer abuse of the statutory provisions of the Insolvency and Bankruptcy Code, 2016 and the rules and regulation framed thereunder (â?? Codeâ??).

### Submitter Details

**11.** It is the case of the Appellant that the Respondent has relied upon an automated intimation generated by the National E-Governance Services Limited (NeSL) reporting the default before the information utility. However, when we look at the above NeSL Report, the default amount stands clearly disputed by the Corporate Debtor thereby establishing the existence of a genuine dispute prior to the filing of the Section 9 petition. We therefore do

not find any merit in the contention of the Appellant that the Section 9 application could not have been dismissed on technical grounds by the Adjudicating Authority with respect to Information Utility reporting.

**12.** When we look at the statutory scheme as outlined in Sections 8 and 9, we notice that Section 8(1) provides for delivery of a demand notice by the Operational Creditor on the occurrence of default by the Corporate Debtor. The Corporate Debtor is obligated to bring to the notice of the Operational Creditor the existence of any dispute in respect of the unpaid operational debt within a period of 10 days of the receipt of the demand notice. If, however, after the expiry of the period of 10 days from the date of delivery of the Section 8 notice or invoice demanding the payment, the Operational Creditor fails to receive payment from the Corporate Debtor or does not receive any notice of the dispute under Section 8(2), the Operational Creditor can proceed to file an application under Section 9(1) of the IBC before the Adjudicating Authority. Conversely seen, Section 9(1) does not envisage any scope for filing of an application under Section 9 once a notice of dispute is received or there is a record of dispute in the Information Utility for in such circumstances, Section 9(5)(ii)(d) comes into play warranting rejection of the Section 9 application. The statutory scheme contemplates rejection of Section 9 application when notice of dispute has been received by the Operational Creditor or there is a record of default in the Information Utility. Present is a case where not only a notice of dispute was sent by the Corporate Debtor on 12.04.2023 after receipt of demand notice dated 01.04.2023 but we also find that even the NeSL record has been disputed by the Corporate Debtor. We are also guided by the

precedent laid down by the Hon'ble Supreme Court in ***Mobilox Innovations (P) Ltd. v. Kirusa Software (P) Ltd. (2018) 1 SCC 353*** that all that the Adjudicating Authority is required to see once a dispute is raised is whether there is a plausible contention which requires further investigation and that the dispute raised is not a patently feeble legal argument or an assertion of fact unsupported by evidence without having to go into the merits of the dispute. The relevant extracts of the said judgement is as reproduced below:

*“51. It is clear, therefore, that once the operational creditor has filed an application, which is otherwise complete, the adjudicating authority must reject the application under Section 9(5)(i)(d) if notice of dispute has been received by the operational creditor or there is a record of dispute in the information utility. It is clear that such notice must bring to the notice of the operational creditor the “existence” of a dispute or the fact that a suit or arbitration proceeding relating to a dispute is pending between the parties. Therefore, all that the adjudicating authority is to see at this stage is whether there is a plausible contention which requires further investigation and that the “dispute” is not a patently feeble legal argument or an assertion of fact unsupported by evidence. It is important to separate the grain from the chaff and to reject a spurious defence which is mere bluster. However, in doing so, the Court does not need to be satisfied that the defence is likely to succeed. The Court does not at this stage examine the merits of the dispute except to the extent indicated above. So long as a dispute truly exists in fact and is not spurious, hypothetical or illusory, the adjudicating authority has to reject the application.”*

So long as a dispute truly exists in fact and is not spurious, hypothetical or illusory, the Adjudicating Authority has to reject the Section 9 application. In this backdrop, we find no good reasons to disagree with the impugned order rejecting the Section 9 application. Furthermore, as we are convinced of the presence of genuine pre-existing disputes in the present factual matrix, we

do not find that it would be of much relevance to dwell upon other jurisdictional issues of threshold and applicability of Section 10A of IBC.

**13.** In fine, we do not find any merit in the Appeal. We find no good ground to interfere with the impugned order. The Appeal is dismissed with no costs with liberty to the Appellant to pursue other civil remedies available in accordance with law. No costs.

**[Justice Ashok Bhushan]  
Chairperson**

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

*Place: New Delhi  
Date : 28.04.2026  
Sheetal*