

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

Company Appeal (AT) (Insolvency) No. 630 of 2024

**(Arising out of the Order dated 13.12.2023 passed by the
'Adjudicating Authority' (National Company Law Tribunal,
Ahmedabad Bench at Ahmedabad in C.P. (IB) No.
212/AHM/2021)**

IN THE MATTER OF:

M/s. Sri Bajrang Wind Park Developers

Through Its Authorized Representative
Mr. Balachandar V. Nadar
Having Registered Office:
Flat No. 901, Boavista, Fortelza Complex,
Central Avenue, Opp. To Gold Adlabs,
Kalyani Nagar, Pune City, Yerwada, Pune,
Maharashtra – 411006

...Appellant

Versus

1. M/s Inox Wind Infrastructure Services Limited

Registered Office: Survey No. 1837 & 1834
At MojeJetalpur, Abs Towers, Second Floor,
Old Padra Road, Vadodara – 390007

Corporate Office at:
Inox Towers, Plot No.17, Sector 16A,
Noida – 201301
Through its Directors

...Respondent No.1

2. Sh. Shanti Prashad Jain

Registered Office:
Survey No. 1837 & 1834 At MojeJetalpur,
Abs Towers, Second Floor,
Old Padra Road,
Vadodara – 390007

Corporate Office at:
Inox Towers, Plot No.17, Sector 16A,
Noida – 201301

...Respondent No.2

3. Sh. Venkatanarayanan Sankaranarayanan

Registered Office:
Survey No. 1837 & 1834
At MojeJetalpur, Abs Towers, Second Floor,
Old Padra Road, Vadodara – 390007

Corporate Office at:
Inox Towers, Plot No.17, Sector 16A,
Noida – 201301

...Respondent No.3

4. **Sh. Manoj Shambhu Dixit**
Registered Office: Survey No. 1837 & 1834
At MojeJetalpur, Abs Towers, Second Floor,
Old Padra Road, Vadodara – 390007
Corporate Office at:
Inox Towers, Plot No.17, Sector 16A,
Noida – 201301 **...Respondent No.4**
5. **Sh. Vineet Valentine Davis**
Registered Office: Survey No. 1837 & 1834
At MojeJetalpur, Abs Towers, Second Floor,
Old Padra Road, Vadodara – 390007
Corporate Office at:
Inox Towers, Plot No.17, Sector 16A,
Noida – 201301 **...Respondent No.5**
6. **Sh. Mukesh Rajnarayan Manglik**
Registered Office: Survey No. 1837 & 1834
At MojeJetalpur, Abs Towers, Second Floor,
Old Padra Road, Vadodara – 390007
Corporate Office at:
Inox Towers, Plot No.17, Sector 16A,
Noida – 201301 **...Respondent No.6**
7. **Sh. Govind Prakash Rathor**
Registered Office:
Survey No. 1837 & 1834
At MojeJetalpur, Abs Towers, Second Floor,
Old Padra Road, Vadodara – 390007
Corporate Office at:
Inox Towers, Plot No.17, Sector 16A,
Noida – 201301 **...Respondent No.7**

Present:

For Appellant : Mr. Aslam Ahmed and Ms. Ankita Sharma,
Advocates

For Respondent : Mr. Navin Pahwa Sr. Advocate with Mr. Pratik
Thakkar, Advocate for R-1.

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

[Per: Arun Baroka, Member (Technical)]

The Appellant / Operational Creditor ('OC') has filed the present appeal, against the order dated 13.12.2023 ("Impugned Order") passed by the National Company Law Tribunal, Ahmedabad Bench ("NCLT") in C.P (IB) No.

212/AHM/2021, whereby the NCLT rejected the application filed by the Appellant/ Operational Creditor under Section 9 of the Insolvency and Bankruptcy Code, 2016 (“Code”).

What did Appellant plead before AA?

2. The Appellant/ Operational Creditor, a registered Partnership Firm was engaged by the Respondent / Corporate Debtor (‘CD’) for works related to wind energy projects and various Work orders and Purchase orders were issued by the Respondent/ Corporate Debtor for the same. It is claimed that the said Work Orders and Purchase Order were admittedly completed by May 2019 and the Appellant/ Operational Creditor raised a total of 75 invoices for the same amounting to Rs. 111,02,60,040/- (One Hundred and Eleven Crore Two Lakhs Sixty Thousand and Forty Rupees) vide letters dated 20.07.2018, 05.08.2018, 15.08.2018, 25.08.2018, 10.09.2018, 03.10.2018, 30.10.2018, 01.11.2018, 29.03.2019 and 14.05.2019. Despite acknowledging and admitting the invoices raised, the Respondent/ Corporate Debtor has only made part payments of approx. INR 85 crores against work done. These payments were ad hoc and on account basis wherein payment of approx. Rs 59.87 Crores was made to the Appellant/ Operational Creditor during the period from 20.04.2016 to 07.05.2019. Further payments of approx. Rs 25.42 Crores were made by Respondent/ Corporate Debtor directly to the vendors/third party employed by the Appellant/ Operational Creditor. The Respondent/ Corporate Debtor till date did not clear its outstanding dues to the tune of Rs. 25,72,70,275/- (Rupees Twenty-Five Crores Seventy-Two Lakhs Seventy Thousand Two Hundred and Seventy-Five Only) along with an interest @ 24% annually calculated till 01.09.2021, under the Code. On

account of continued failure to pay the pending and admitted operational debt despite issuance of the Demand Notice dated 02.07.2019 under Section 8 of the Code as per Form 4 mentioned in Rule 5(1)(b) of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016, the Appellant/ Operational Creditor was constrained to file a Petition under Section 9 of the Code bearing No. C.P (IB) No. 212/AHM/2021 before the Ld. NCLT at Ahmedabad on 21.10.2021.

3. We note that Part IV in column 2 in the CP indicates the following claim:

TOTAL AMOUNT OF DEBT, DETAILS OF TRANSACTIONS ON ACCOUNT OF WHICH DEBT FELL DUE, AND THE DATE FROM WHICH SUCH DEBT FELL DUE:

Rs. 42,49,84,942/- (Rupees Forty Two Crores Forty Nine Lakhs Eighty Four Thousand Nine Hundred and Forty Two) including an interest @ 24% annually till 01.09.2021, under the Code towards the acknowledged, unpaid and admitted due amounts against the Invoices raised by the Operational Creditor, for the Creditor according to the Purchase / Work Orders of the Operational Debtor for its project at Sadala, Gujarat, as agreed between the parties.

Details of Debt:

a. The Operational Creditor is filing the present application under section 9 of the Insolvency and Bankruptcy Code, 2016 and seeking to initiate corporate insolvency resolution process of the Operational Debtor namely M/s Inox Wind Infrastructure Services Limited on the grounds that the Operational Debtor Company is indebted and is unable to pay its admitted, acknowledged and undisputed outstanding sum of Rs. 42,49,84,942/- (Rupees Forty Two Crores Forty Nine Lakhs Eighty Four Thousand Nine Hundred and Forty Two) including interest @ 24% annually till 01.09.2021, under the Code.

b. That the Operational Debtor is engaged in the business of real estate, construction, infrastructure support and capabilities services in India. The true copy of the Master Data of the Operational Debtor is annexed herewith as ANNEXURE A1.

c. That the Operational Creditor is engaged in the business of setting up wind projects.

d. That the Operational Debtor engaged the Operational Creditor for works related to 50 MW wind power project at Sadala, Gujarat Project which was awarded to the Operational Debtor by SJVNL.

e. That the Operational Debtor issued Work / Purchase Orders bearing No(s). 5300009998 dated 15.07.2018 for "Supply and Erection of 33kV Panther Line", 5300009999 dated 15.07.2018 for "Construction of WTG FND - 92HH", 5300010000 dated 15.07.2018 for "Erection of USS", 5300009996 dated 15.07.2018 for "Supply and Erection of 33kV Panther Line", 5100015260 dated 15.07.2018 for "Supply of USS Equipment and Accessories", 5300009965 dated 17.10.2018 for "Construction of WTG FND - 92HH", 5300009967 dated 17.10.2019 for "Erection of USS", 5100015224 dated 17.10.2018 for "Supply of USS Equipment and Accessories", 5300009988 dated 23.10.2018 for "Supply and Erection of 33kV Dog Line" and 5300009986 dated 23.10.2018 for "Supply and Erection of 33kV Panther Line". The true copies of the Purchase / Work Orders dated 15.07.2018, 17.10.2018 and 23.10.2018 are annexed herewith as ANNEXURE A2 (Colly).

f. That the Operational Creditor in furtherance to the products supplied and the installations works undertaken raised various Invoices from time to time and delivered the same to the Operational Debtor for payments. The Operational Creditor issued Invoices to the Operational Debtor on various occasions vide letters dated 20.07.2018, 05.08.2018, 15.08.2018, 25.08.2018, 10.09.2018, 03.10.2018, 30.10.2018 and 14.05.2019 and the same were duly acknowledged by the Operational Debtor. The true copy of the

letters dated 20.07.2018, 05.08.2018, 15.08.2018, 25.08.2018, 10.09.2018, 03.10.2018, 30.10.2018 and 14.05.2019 including the detailed Invoices raised by the Operational Creditors and duly acknowledged by the Operational Debtor are annexed herewith as ANNEXURE A3 (Colly).

g. That the Operational Creditor duly complied with the terms and conditions as per the work orders. The Operational Creditor delivered the products and completed the installation work timely, i.e. till May 2019, in good faith.

h. That upon delivery of products required by the Operational Debtor and completion of installation work to the satisfaction of the Operational Debtor, the Operational Creditor raised invoices for the outstanding amounts to be paid by the Operational Debtor. However, to the utter dismay and shock of the Operational Creditor, the Operational Debtor never made the complete payment towards the outstanding amount and only made part payments towards discharging its outstanding legal liability.

i. Since the Operational Debtor did not release payments towards its outstanding liability to the Operational Creditor, the Operational Creditor addressed various emails to the Operational Debtor requesting for the release of the said outstanding amounts. It is pertinent to mention here that the Operational Debtor had duly received, acknowledged and signed the aforesaid letters which included the detailed Invoices raised by the Operational Creditor. However, despite the acknowledgement of its debt by the Operational Debtor, it has failed to meet its legal obligation and has failed to clear the pending payments to the Operational Creditor.

j. That the Operational Creditor has been continuously pursuing the officials of the Operational Debtor requesting for the payment of the outstanding amounts against the Invoices raised totalling to Rs. 25,72,70,275/- (Rupees Twenty Five Crores Seventy Two Lakhs Seventy Thousand Two Hundred and Seventy Five Only) along with interest @ 24% p.a. from the date of default till date but

to no avail. It is reiterated that the supply of equipment and installation work carried out by the Operational Creditor was to the complete satisfaction of the Operational Debtor and the Operational Debtor never raised any issue with respect to the same during or after the completion of the work by the Operational Creditor. However, despite the same, the Operational Debtor did not make payment of the due amount to the Operational Creditor and has repeatedly sought time to make payment by way of frivolous excuses. That the delay in payments by Operational Debtor has prolonged the whole process and the Operational Creditor has been constrained to keep following up for the said payments, to no avail.

k. Vide several emails, the Operational Creditor has sought payments towards the outstanding invoices. However, till date there has been no reply from the officials of the Operational Debtor to said emails addressed by the Operational Creditor to the Operational Debtor regarding payment of the outstanding amount. The true copies of the emails sent by the Operational Creditor seeking release of due amounts are annexed herewith as ANNEXURE A4 (Colly).

l. That upon completion of each work, the Operational Creditor had raised a Joint Measurement Sheet depicting completion of work which was shared with the Operational Debtor. The Operational Debtor, after verifying the same and being satisfied with the work of the Operational Creditor had duly acknowledged each of the Joint Measurement Sheet depicting completion of work by signing on the same. Despite the said acknowledgement, the officials of the Operational Debtor repeatedly sought time to make payment of said Invoices on one pretext or another and no whisper of dissatisfaction with the work was ever uttered by the Operational Debtor. The Operational Debtor has till date failed to abide by the terms and conditions to discharge its legal obligation. The true copy of the Joint Measurement Sheet depicting completion of work shared by the Operational Creditor and duly verified and acknowledged by the Operational Debtor are annexed herewith as ANNEXURE A5 (Colly).

m. That upon repeated requests for payment raised by the Operational Creditor, the Operational Debtor has on various occasions released only part payments towards discharging its legal liability. As is evident from the Statement of Accounts maintained by the Operational Creditor, the Operational Debtor owes a total of Rs. 42,49,84,942/- (Rupees Forty Two Crores Forty Nine Lakhs Eighty Four Thousand Nine Hundred and Forty Two) including Principal Amount of Rs. 25,72,70,275/- (Rupees Twenty Five Crores Seventy Two Lakhs Seventy Thousand Two Hundred and Seventy Five Only) along with an interest @ 24% annually. The true copy of the Statement of Accounts of the Operational Creditor is annexed herewith as ANNEXURE A6.

n. That it is pertinent to mention here that the acknowledgement of the Invoices and the part payments made by the Operational Debtor are deemed admission of default of payments on part of the Operational Debtor.

o. That being aggrieved by the aforementioned facts, the Operational Creditor issued a Demand Notice dated 02.07.2019 under the provisions of the Code. Vide its Reply dated 17.07.2019, the Operational Debtor has denied in totality any debts being due. Thereafter, the Operational Debtor maliciously and as an afterthought, issued a legal notice dated 04.02.2020, claiming a false and made-up amount of Rs. 54,50,00,000/- (Rupees Fifty Four Crores Fifty Lakhs Only) from the Operational Creditor and by way of the same legal notice, sought to invoke arbitration, in the event that the Operational Creditor fails to make the aforesaid payment within 30 days from the receipt of said legal notice.

p. That the stance taken by the Operational Debtor is not only arbitrary but also irrational and without any factual basis as the Operational Debtor was duty bound to make regular and timely payments. It is submitted that the Operational Debtor has no locus to demand said payment from the Operational Creditor. The Operational Debtor has issued the said legal notice with fraudulent intention and wrongfully attempted to invoke arbitration only after

the receipt of the Demand Notice issued by the Operational Creditor under the provisions of IBC, 2016. That instead of fulfilling its legal obligations of making payment towards the debt owed by the Operational Debtor to the Operational Creditor, the Operational Debtor has sought to employ fraudulent and malicious delaying tactics, much to the detriment of the Operational Creditor. The true copy of the Legal Notice dated 02.07.2019 is annexed herewith and marked as ANNEXURE A7. The true copy of the postal receipts is annexed herewith as ANNEXURE A8. The true copy of the reply by the Operational Debtor dated 17.07.2019 is annexed herewith as ANNEXURE A9. The true copy of the malicious legal notice dated 04.02.2020 sent by the Operational Debtor invoking arbitration after the receipt of demand notice under IBC, 2016 is annexed herewith as ANNEXURE A10.

q. That the SJVNL website states that for the Sadla Wind Power Project, "Erection of all 25 WEGs has been completed and all units are under commercial operation after certification from GEDA." Therefore, it is an undisputable fact that the supply and installation work assigned to the Operational Creditor as per the Work Orders has been carried out timely to the satisfaction of the Operational Debtor, without any demur. Therefore, evidently, the Operational Creditor has completely discharged its duties.

r. That vide the Invoices and reminders via email raised by the Operational Creditor, the Operational Debtor has had ample opportunity to present objections as to the work being carried out by the Operational Creditor. However, the fact that there was never even a whisper of dissatisfaction by the Operational Debtor with respect to the work being carried out by the Operational Creditor, is further evidence that any attempt to raise a dispute by way of the legal notice and invocation of arbitration are merely an afterthought by the Operational Debtor. Additionally, the requests made by Operational Debtor to allow more time for payments towards the outstanding debt ought to be considered as clear admission of its liabilities by the Operational Debtor. Hence, the Operational Debtor is merely attempting to create further delay the delivery of justice

owed to the Operational Creditor. A copy of the screenshot of SJVNL's website is attached herewith and marked as Annexure A11.

s. It is submitted that any dispute as to the outstanding amount has to be "pre-existing" i.e. prior to the issuance of demand notice under the provisions of the Code. It is a well settled position of law that dispute should be a genuine dispute and not one that was raised with malafides to stall the insolvency resolution process. The Operational Debtor has for the first time raised any such dispute and that too only after the issuance of Demand Notice under the provisions of the Code by the Operational Creditor. The legal notice issued by the Operational Debtor is baseless and hence, is not a genuine dispute.

t. As laid down by way of a catena of judgments, such a legal 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. Since the legal notice issued by the Operational Debtor is in itself for invocation of arbitration, it cannot be said that a dispute is pending between the parties. In fact, the said notice is a feeble attempt by the Operational Debtor to establish a false, frivolous and baseless dispute. Therefore, there is no plausible contention which requires further investigation and that the "dispute" brought forth by the Operational Debtor is contrary to the true and correct facts of the case and entirely unsupported by evidence.

u. In the above circumstances, owing to the failure of the Operational Debtor in making payment towards the said invoices in order to discharge its legal liability towards the Operational Creditor, the Operational Creditor is constraint to file the present application under section 9 of the Insolvency and Bankruptcy Code, 2016 to initiate corporate insolvency resolution process of the Operational Debtor. The details of the debt and the date from which such debt fell due is herein below:

That as in February, 2020, outstanding amount is: Rs.42,49,84,942/- (Rupees Forty Two Crores Forty Nine Lakhs Eighty Four Thousand Nine Hundred and Forty Two) including Principal amount of Rs. 25,72,70,275/- (Rupees Twenty Five Crores Seventy Two Lakhs Seventy Thousand Two Hundred and Seventy Five Only) along with an interest @ 24% annually till date, on account of non-payment against the Invoices raised by the Operational Creditor, for the installation works done and the aforesaid products delivered in the said "Sadala, Gujarat" project of the Operational Debtor and as agreed between the parties.

AMOUNT CLAIMED TO BE IN DEFAULT AND DATE ON WHICH DEFAULT OCCURRED (ATTACH THE WORKINGS FOR COMPUTATION OF AMOUNT AND DATES OF DEFAULT IN TABULAR FORM):

Rs. 42,49,84,942/- (Rupees Forty Two Crores Forty Nine Lakhs Eighty Four Thousand Nine Hundred and Forty Two) including Principal amount of Rs. 25,72,70,275/- (Rupees Twenty Five Crores Seventy Two Lakhs Seventy Thousand Two Hundred and Seventy Five Only) along with an interest @ 24% annually till date, under the Code.

Already Annexed

4. It was claimed by the Appellant that the only points of defence urged in the Reply by the Respondent /Corporate Debtor were that:

- the petition is not maintainable as no date of default is mentioned
- due to alleged delay in the completion of the work by the Appellant/ Operational Creditor, the Respondent/ Corporate Debtor faced liquidated damages and other additional expenses including payments due to the vendors of the Appellant/ Operational Creditor

- the Respondent/ Corporate Debtor has suffered serious loss on account of alleged admitted delay in the completion of the work by the Appellant/ Operational Creditor and
- the Respondent/ Corporate Debtor is not liable to pay 15 invoices dated 14.05.2019 for an amount of Rs.3,70,55,481 as the same were specifically rejected for being submitted without supporting documents.

What did AA order?

5. The AA dismissed the CP mainly on the grounds of pre-existing dispute as also on the ground that there is no default since the due date as per Clause 38 of the Work Order did not exist when the invoices are raised. The Relevant portion of the orders is as follows:

“Reasons

17. One of the objections taken by the Corporate Debtor is regarding registration of partnership firm of Operational Creditor. In view of rulings in Rourkela Steel Syndicate vs. Metistech Fabricators Pvt. Ltd. Company Appeal (AT) (Insolvency) No. 924 of 2022 by NCLAT and OPJK Paper Company V/s. International Print-o-Pac Ltd. (C.P.(IB)-240/ND/2022, cited by Operational Creditor, the application under Section 9 of Insolvency and Bankruptcy Code, 2016 are proceedings and has not a suit. Therefore, the provisions of Partnership Act will not be applicable and the petition is maintainable. Apart from this, the Operational Creditor also filed a document regarding registration of their partnership firm by filing IA No.1244 of 2023. Therefore, the contention of Corporate Debtor that the petition is not maintainable holds no water.

18. According to Corporate Debtor, there is pre-existing dispute. The Corporate Debtor invoked arbitration proceedings on 04.02.2020 the demand notice was issued on 02.07.2019 while this petition is filed on 21.10.2021. The Operational Creditor also appeared before arbitrator and

filed its counter claim and arbitration proceedings are still pending. According to the operational creditor as the arbitration notice was issued after the demand notice so it cannot be said to be a pre-existing dispute. To find out whether there is pre-existing dispute, it is necessary to look into the communications between the parties. The applicant filed various work orders and tax invoices along with the application while the respondent filed Memorandum of Understanding and copies of communications via e-mail between the parties. The Corporate Debtor also filed copies of arbitration awards regarding proceedings between it and some other companies relating to the same work.

19. The various correspondence between the parties shows that there was a dispute with respect to work on various counts. Also there were tax issues between them. In one of the email dated 05.12.2018, it is mentioned that "Please come and reconcile as there are many anomalies as regard to your account in totality same has to be discussed with project development and project execution along with settlement and reconciliation of Maharashtra invoices which are pending for years together. As Maruti and Bajrang are one and the same company, hence, complete reconciliation for Gujarat and Maharashtra is must to do."

20. There was also a dispute regarding amount payable which is also admitted by the Operational Creditor. It is also pertinent to note that the Operational Creditor itself admitted that some invoices were disputed by the Corporate Debtor due to discrepancies in it. So also, the account was not finalised and discussion is needed at the time of final reconciliation.

21. The term dispute is defined in Section 5(6) of IB Code, 2016 as under:

- (6) "dispute" includes a suit or arbitration proceedings relating to-
 - (a) The existence of the amount of debt;
 - (b) The quality of goods or services; or
 - (c) The breach of a representation or warranty;

22. As mentioned above, the Corporate Debtor has raised the issue of pre-existing disputes and place on record a series of emails which shows that there was a dispute between them on various issues relating to the work. It appears that the notice of arbitration was issued after receiving demand notice but the Operational Creditor appeared before Arbitration Tribunal and contested the matter. It is not the defence of Corporate Debtor that only because the arbitration proceedings are initiated there were pre-existing disputes but such disputes were also raised in various correspondences between the parties. The Pre-existing disputes can also be proved by other evidence than the arbitration proceedings. There appears that the disputes truly exist and is not the hypothetical. This fact is also brought to the notice of Creditor in the reply given by the Corporate Debtor to the demand notice which was issued within 10 days from receipt of notice. The Corporate Debtor specifically mentioned various disputes in its reply. In support, he has also produced series of emails. From this fact the pre-existing disputes evidences. "In Mobilox, case (cited supra) it is also held that, all that the adjudicating authority is to see at this stage is whether there is a plausible contention which requires further investigation and that the "dispute" is not a patently feeble legal argument or an assertion of fact unsupported by evidence. It is important to separate the grain from the chaff and to reject a spurious defense which is mere bluster. However, in doing so, the authority does not need to be satisfied that the defense is likely to succeed. The authority does not at this stage examine the merits of the dispute except to the extent indicated above. So long as a dispute truly exists in fact and is not spurious, hypothetical or illusory, the adjudicating authority has to reject the application."

23. On perusing the application, it appears that the date of default is not mentioned in it. According to the Operational Creditor, he has raised various invoices from time to time. In furtherance to products supplied and installation work undertaken. Those invoices were issued vide letter dated 20.07.2018 onwards. According to respondent, the invoices claimed in the

petition starts from 20.07.2018 to 14.05.2019 while the 365 days to turn the invoices as default will be from 20.07.2019 till 14.05.2020 respectively. According to him, thus the demand notice is premature as issued before the default occurred and thus, there were no default at all. The date of invoices and copy of invoices placed on record by the applicant itself. No specific date of default is mentioned in the application.

24. Considering the above mentioned facts, the submissions of parties and rulings cited, it is clear that the applicant has failed to prove the ingredients required for initiation of Corporate Insolvency Resolution Process against the respondent.

25. Hence, we pass the following order.

ORDER

The application is rejected.

CP(IB) 212 of 2021 is disposed off.”

[Emphasis supplied]

Appellants Case:

6. Appellant avers that the impugned order dismissed the Petition under Section 9 of the Code without taking into consideration the intricate facts of the case. The outstanding amount claimed against the invoices raised were duly acknowledged and accepted by the Respondent/ Corporate Debtor in as much as is unequivocally reflected by the emails of 17.08.2018, 13.11.2018 and 22.11.2018 addressed to the Appellant/ Operational Creditor by the Respondent/ Corporate Debtor. The Corporate Debtor in its Reply to the Company Petition at para 30 and 31 only rejected invoices at Page 83 to 103 of the Petition, which in total amounts to INR 3,60,71,169. The remaining invoices have not been disputed by the Corporate Debtor.

7. A discrepancy in the invoices was alleged in the email of 13.11.2018 but no discrepancy was pointed in the email of 22.11.2018 issued after 09 days. The only issue raised was that the invoices and quantity are accepted but final amount is subject to certain costs which is to be discussed at the time of final reconciliation. Such costs were extraneous costs such as LD, generation loss and idle charges unconnected with the invoices. None of this qualifies as any defence with respect to the proceedings initiated through Form 4 of the Code which is based on invoices for work done and accepted. Additionally, the proceedings of arbitration initiated against SJVNL the Respondent/ Corporate Debtor did not put any blame on the Appellant/ Operational Creditor for Liquidated Damages, generation loss / idle charges but rather these costs were blamed solely on SJVNL, the project owner and thus clearly implying that no delay was attributable to the Appellant/ Operational Creditor and therefore all claims of Liquidated.

8. Appellant further states that the mention of a reconciliation in the email dated 22nd November 2018 is insignificant primarily because the invoices are *firstly*, accepted and therefore the reconciliation is irrelevant and *secondly*, the Respondent/ Corporate Debtor in its Statement of Claim filed in the arbitration between the Corporate Debtor and SJVNL at Para 85 summarizes the reasons for delay, which were not attributable to the Appellant/ Operational Creditor and further at Para 96 admits the completion of work by 18.04.2019. Further at Para 22- 23 of Reply filed by the Respondent/ Corporate Debtor to the Section 9 IBC application also accepts the completion of the project.

9. Appellant further submits that admittedly vide email dated 19.06.2019, the Appellant/ Operational Creditor had sought payments towards the outstanding invoices. Despite the receipt of the said email, the Respondent/ Corporate Debtor chose neither to respond nor to comply the same. The Respondent/ Corporate Debtor did neither dispute the amount claimed by the Appellant/ Operational Creditor nor questioned the nature and the quality of the work done.

10. The Respondent/ Corporate Debtor instead of complying with the Demand notice issued under IBC, as an afterthought, responded to the same via an interim Reply dated 17.07.2019 wherein the Respondent/ Corporate Debtor denied in totality any debts being due and on the contrary, illegally and arbitrarily, for the first time demanded from the Appellant/ Operational Creditor a sum of Rs 54,50,00,000/- in addition to other losses yet to be quantified only with the ultimate objective of conveying a semblance of dispute between the parties. The Corporate Debtor in the said reply does not refer to any existing dispute but only alleges dispute. Additionally, in furtherance to a *modus operandi*, the Respondent/ Corporate Debtor maliciously and as an afterthought, also issued a legal notice dated 04.02.2020 claiming a false and baseless amount of Rs. 54,50,00,000/- (Rupees Fifty-four Crores Fifty Lakhs Only) from the Appellant/ Operational Creditor and by way of the same legal notice, sought to invoke arbitration.

11. In the interim reply of 17.07.2019, the Respondent/ Corporate Debtor mentioned that it is yet to quantify other claims but in the notice of arbitration sent on 4.2.2020 still continued to claim the same amount and repeated the

same statement that it is quantifying the same which clearly shows the frivolous nature of dispute raised and a clear after thought.

12. Merely because the 'Corporate Debtor' has disputed the claim by showing that there is certain counter claim, it cannot be held that there is pre-existence of dispute, in absence of any evidence to suggest that dispute was raised prior to the issuance of demand notice under Section 8(1) or invoice.

13. The Respondent/ Corporate Debtor with a fraudulent intention invoked the arbitration only as a counter blast to the proceedings initiated by the Appellant/ Operational Creditor under Section 9 the Code.

14. Respondent/ Corporate Debtor never sent any notice or email to the Appellant/ Operational Creditor alleging any delay or deficiencies in the work prior to the issuance of the demand notice.

15. NCLT also failed to consider that the Respondent/ Corporate Debtor has made a frivolous attempt to raise sham, vague and moonshine defence to establish a pre-existing dispute amongst parties to present matter.

16. NCLT while observing in the impugned order that the date of default was not mentioned by the Appellant/ Operational Creditor erred in not considering that the Demand Notice was sent under Section 8 of the IBC, 2016 as per Form 4 mentioned in Rule 5(1)(b) of Rules 2016 which prescribes the Form of Notice with which invoice demanding payment is to be attached. NCLT failed to consider that as per the prescribed Form 4 of IBC the date of

default is not required to be mentioned when the notice u/s 8 IBC is being sent for unpaid invoices according to the provisions of the Act. NCLT, while dismissing the company petition on grounds that no date of default was mentioned, failed to consider that fact that non-mentioning of the date of default does not affect the merits of the case. NCLT vide the impugned order erred in dismissing the petition wrongly on the ground that the claim raised by the Appellant/ Operational Creditor falls within the ambit of disputed claim in complete disregard to the settled law that merely disputing a claim cannot be a ground as a claim means a right to payment even it is disputed.

Respondent's case

17. Adjudicating Authority, in its Impugned Order, has rightly dismissed the Company Petition filed by the Appellant, on grounds of pre-existing disputes, ongoing arbitration and default having not occurred and such petition was not maintainable under Section 9 of the Code. Thus, the Appeal under reply is completely devoid of merits and liable to be set aside.

18. Appellant herein had issued demand notice dated 02.07.2019, and the Answering Respondent No. 1 has on 17.07.2019 raised notice of dispute under Section 8 (2) (a) of the Code referring to various disputes within the parties. Once notice of dispute was served upon the appellant herein the petition filed under Section 9 of the Code was rightly rejected in accordance with Section 9 (5) (ii) (d) of the Code. The proceedings under Section 9 were summary proceedings and thus, the Hon'ble Adjudicating Authority has rightly rejected the petition based on pre-existing disputes between the parties.

19. The Respondent No.1 by Email dated 17.08.2018, had requested the Appellant herein to submit invoice along with work certificates against Sadia Project and to resolve the Tax Issues alongwith request to make a personal visit for following agendas to the discussed during the meeting: -

- a. Invoice submission issue.
- b. Tax issue to release revise order as per mutual agreement.
- c. Balance sub lease schedule to be provided.
- d. ROW issue relate to SDLT- 119 Firm Action Plant. As the WTG is erected long back.
- e. Completion of balance feeder work.
- f. Balance work completion schedule.
- g. All pending document submission schedule related to Road & Line ROW.

20. Thereafter, even on 13.11.2018, on account of discrepancies in the invoices the Respondent No. 1 had communicated to the Appellant. Thereafter, on 22.11.2018, the Respondent No.1 have shared comments on the invoices submitted by the Appellant with specific note stating *"the comments and acceptance of qty is based on the invoices submitted. This is not the final amount considered as we have not considered LD, Generation loss and ideal charges which Inox has paid to its customer. This needs to be discussed separately at the time of final reconciliation"*. Respondent No.1 had suffered various losses by way of liquidated damages and arbitration award by the customers on account of delay in work by the Appellant. Further the reconciliation was pending, and the deduction of LD was to be discussed with the Appellant.

21. The said issue of reconciliation was explained by the Answering Respondent No.1 by Email dated 05.12.2018 from Respondent No.4 herein wherein the entire dispute between the parties was summarized and a polite request to resolve was communicated to the Appellant stating that:

"Please come and reconcile as there are many anomalies as regards to your account in totality. Same has to be discussed with Project Development and Project execution along with settlement and reconciliation of Maharashtra invoices which are pending for years together. As Maruti, Bajrang are one and same companies, hence complete reconciliation for Gujarat and Maharashtra is must to do and which will require a good amount of time. This will certainly include pending points of Maharashtra and Gujarat both which being pending from years together. So please come prepared with your team for Gujarat and Maharashtra both commercial and technical pendencies from both side. Please take confirmation from us before coming to our Noida office. Also please reply first to our mails as regards to pendencies of Maharashtra documents balance land to be transferred, NA permissions 7112 permissions, WTGs left out for commissioning in Maharashtra because of reasons and short coming of Maruti. Hope to clear all issues in totality. We are ready to Co-operate on all fronts to resolve the same ".

22. The Answering Respondent No. 1 had referred and produced relevant evidence showing losses suffered by the Answering Respondent No.1 on default of the Appellant. In the Sadla Project Respondent No.1 had suffered liquidated damages to the tune of Rs.33,20,76,452/- and GST on such LD to the tune of Rs.6,95,72,580/- from SNN Ltd. and the Answering Respondent No.1 has filed arbitration proceedings wherein SJVN Ltd. had filed counter claim around Rs.500 Cr. against the parent company of Answering Respondent No. Further Answering Respondent No.1 had suffered LD of

Rs.3.15 Cr. from ReNew from Sadla Project. The Answering Respondent No.1 had suffered LD of Rs.7,34,00,000/- from Green Infrawind Energy Ltd. Answering Respondent No.1 had suffered LD of Rs.3,22,77,1 I6/- from DJ Malpani Group.

23. With respect to Maharashtra Project Answering Respondent No.1 and its parent company faced arbitration award of Rs.26,96,61,926/- alongwith 9% interest from Surbhi Textile Mills Pvt. Ltd. and SJP Construction Pvt. Ltd.

24. Further the Answering Respondent No.1 has approx. recovery from the Appellant and its Associates to the tune of Rs.3,83,34,3 8,000/- Evidently the Appellant has claimed invoices for the Sadla Project and further, on the basis of MOUs between the parties the liquidated damages of Maharashtra Projects was to be recovered from Sadla Project. Thus, even otherwise the invoices claimed in Section 9 petition could not be claimed prior to reconciliation of accounts.

25. The Answering Respondent No.1 had time and again communicated to the appellant herein for reconciliation since it had huge receivables against the appellant herein and the Answering Respondent No.1 had suffered liquidated damages. The Adjudicating Authority had considered these communications between the parties and have referred in the impugned order. That, the Answering Respondent No. 1 had time and again requested the appellant herein for reconciliation of the accounts as well as pending points however, the Appellant herein had opted for issuing demand notice instead on reconciliation. The Hon'ble Apex Court in the case of **Sabarmati**

Gas Ltd. vs. Shah Alloys Ltd. reported in AIR 2023 SC 288 has interpreted the term reconciliation and has held that a communication for reconciliation would reveal existence of pre-existing dispute between the parties. In view of the above it is evident that there was pre-existing disputes between the parties and the Hon'ble Ld. Adjudicating Authority has rightly referred to the above communications and relied on the judgment of Hon'ble Apex Court passed in Sabarmati Gas Ltd. vs. Shah Alloys Ltd. while dismissing the petition under Section 9 for pre-existing disputes

26. Respondent further avers that the Appellant had not mentioned any date of default in its Form 5. The Appellant was aware that the invoices claimed under the Section 9 petition was not in default as per the work orders. That the invoices are from 20.07.2018 to 14.05.2019 and as per the Clause 38 named as under payment terms Clause the default would occur after period of 365 days from the due date. Clause 38 is reproduced herewith: -

“38. Notwithstanding any other term of the contract, in case of payment being made after its due date, parties agree that the same will not amount to default. In this regard, parties agree that Default would accrue only in the event the Company expiration of 365 days from the date on which the amount fell due as per clause regarding "payment terms" of the agreement/ POI WO. However, during the aforesaid period of 365 days from the due date. Vendor, shall be entitled an interest @12% p.a. from the Company on the due amount, which is payable after the expiration of the said period of 365 days.”

27. As per Clause 38 the default date of the invoices would be after 365 days of its due date. Without prejudice, that even considering the date of invoice as due date then also default if any would occur from 20.07.2019 to

14.05.2020. However, the date of demand notice of the Appellant is 02.07.2019 which is prior to the default of first invoice. Thus, on the date of issuance of demand notice none of the invoices claimed in Section 9 petition were under the term 'default'. Thus, the Section 9 petition was even otherwise premature and not maintainable.

28. Respondent avers that there is an ongoing arbitration between the Appellant and Answering Respondent No.1. The Answering Respondent No. 1 and the Operational Creditor are before the Arbitration Tribunal comprising of Sole Arbitrator Hon'ble Mr. Justice D.K. Jain Former Judge of Supreme Court of India. The Answering Respondent No. 1 had invoked arbitration by notice of invocation dated 04.02.2020. Answering Respondent No. 1 had filed Arbitration Petition No.1094 of 2022 before the Hon'ble High Court of New Delhi under Section 11(3) and (4) of the Arbitration and Conciliation Act, 1996 and by an order dated 24.01.2023, the Hon'ble High Court of New Delhi on request by both the parties have agreed for sole arbitrator instead of 3 Members Arbitral Tribunal. The Answering Respondent No. 1 herein had filed claim of Rs.95,98,08,670/- against the Appellant and these aspects were brought on record of Section 9 petition by an additional affidavit dated 10.07.2023.

29. Further the Appellant had filed counter claim of Rs.61,87,59,500/-, before the above arbitration proceedings which included the claim made in the Section 9 Petition. This aspect was brought to the notice of the Hon'ble Ld. Adjudicating Authority in the written arguments filed by the Corporate Debtor.

30. Adjudicating Authority had heard both the parties and reserved Section 9 Petition on 22.11.2023 and on 24.11.2023 the Arbitration Tribunal comprising of Hon'ble Sole Arbitrator Mr. Justice D.K. Jain, Former Judge Supreme Court of India had terminated the counter claims filed by the Appellant herein by a detailed order. The Appellant herein had filed an application dated 19.02.2024 for recall of order dated 24.11.2023 and revival of its counter claim before the Arbitration Tribunal comprising of Hon'ble Sole Arbitrator Mr. Justice D.K. Jain, Former Judge Supreme Court of India. However, by an order dated 15.03.2024 Arbitration Tribunal dismissed the application for reviving the counter claim of the Appellant. The Arbitration Tribunal while passing the order dated 15.03.2024 as recorded the arguments of the Ld. Counsel of the Appellant herein wherein it is the argument of the Appellant that the Counter Claim arises out of the 'dispute' is the relevant para of the order recording the arguments of the Appellant is incorporated herein below:-

"14. Mr. Aslam Ahmed, Ld. Counsel for the Respondent/Applicant, reiterating the Respondent's stand in the Application, contended that having regard to the provisions contained in Section 23 (2A) read with Section 21 of the Act, the arbitral proceedings are to be taken as a whole, as counter claim also arises out of the "disputes" within the remit of the agreement between the parties. It was asserted that the Claim and Counter Claim being interlinked with each other, cannot be segregated and are to be adjudicated together. In support of the proposition that a narrow approach of assuming that "dispute" means only the Claims does not subserve the ends of scheme of the Act, the decision rendered by the Hon'ble High Court of Delhi in SSMP Industries Ltd. v. Perkan Food, 2019 SCC Online Del. 9339, was pressed into service."

Being aggrieved by the order dated 15.03.2024 passed the Arbitration Tribunal, the Appellant herein had approached the Hon'ble High Court of New Delhi by way of Writ Petition (Civil) No.5058 of 2024, which had admitted the said Writ Petition (Civil) No.5058 of 2024. Thus, the counter claim of the Appellant, being rejected by the Arbitral Tribunal, the very same amount claimed in present Section 9 Petition was already dismissed by Arbitration Tribunal comprising of Hon'ble Sole Arbitrator. These aspects are deliberately not brought by the Appellant herein before this Hon'ble Appellant Tribunal.

31. Even otherwise as per the judgment of **Sabarmati Gas Limited vs. Shah Alloys Limited reported in AIR 2023 SC 288** the Hon'ble Apex Court has opined that when agreement within the parties carries arbitration clause and arbitration proceedings being pending the parties shall be left with liberty to raise all contentions before the arbitrator. That, in the case of Sabarmati Gas Limited vs. Shah Alloys Limited the demand notice was issued on 01.04.2017 while the notice of arbitration was dated 29.11.2019, however, the arbitration proceedings being pending, the Hon'ble Apex Court directed the parties for adjudication before the arbitrator. The relevant para of the said judgment is incorporated hereinbelow: -

".....

39. In the contextual situation, it is also relevant to refer to the fact, rightly taken note of by the NCLT, that the Respondent herein had filed a Commercial Suit No. 92/2017 on 28.04.2017 before the Commercial Court in Ahmedabad, claiming damages for the loss suffered by it due to discontinuation of gas supply. True that on 12.07.2018, the said Commercial Civil Suit was dismissed by the Commercial Court at

Ahmedabad on the ground of being barred by limitation. Annexure-B would reveal that against the judgment of dismissal in the said suit, the Respondent herein had filed First Appeal No. 3841 of 2018 before the High Court of Gujarat at Ahmedabad. It was disposed of on 11.08.2021, taking into account the joint submission that parties be permitted to settle dispute through arbitration process. In this context it is also to be noted that the notice of arbitration dated 29.11.2019 has been issued by the Appellant itself. Recording the submission, the appeal was permitted to be withdrawn leaving the parties to proceed with arbitral process. This fact is not disputed and in fact, it is indisputable in view of Annexure-B, judgment dated 11.08.2021 of the High Court of Gujarat in Misc. First Appeal No. 3841of2018. In Annexure-B, it is recorded thus:

..... Both the learned Counsel have taken instructions and have jointly submitted that let the parties get their dispute settled through the arbitration process where learned former Judge of this Court, Justice J.C. Upadhyaya (Retired) has already been appointed as the arbitrator on 29.11.2019 and since then the matter is pending here.

..... In this context, it is also relevant to note that Gas Supply Agreement (GAS) which is an agreement entered into between the Appellant and the Respondent dated 30.05.2008 in regard to the supply of natural gas, contains an arbitration Clause viz., Clause No. 17. When the agreement entered into between the parties carries an arbitration Clause and when the parties mutually consented and sought to proceed with arbitration before the High Court and further, when the arbitration proceedings are pending, we are of the view that the parties shall be left with the liberty to raise all contentions before the arbitrator, except the legal questions discussed and decided in this judgment.

....”

32. Further on 07.11.2015 and 09.11.2015 the erstwhile representatives of the Appellant had entered into discussions and drawn minutes of such discussions held with the representatives of the Answering Respondent No. 1 and agreed on deduction of LD towards delay and generation loss of Maharashtra Project to be distributed and imposed on upcoming Sadla Project. After agreeing to adjustment of LD in upcoming Sadla Project the Answering Respondent No. 1 entered into MOU dated 07.01.2016 with the Appellant for the development of Sadla Project to be concluded by 31.12.2016. On account of this aspect the Answering Respondent No. 1 has time and again requested the Appellant herein to reconcile the accounts of the Appellant. However, the Appellant without any reconciliation and attempt for settling the disputes between the parties straight away filed the Section 9 petition.

33. Respondent No.1 further avers that the present appeal suffers from misjoinder of parties, as the Appellant has joined directors and ex-director of the Answering Respondent No. 1 while challenging the dismissal of Section 9 petition. Such attempt itself demonstrate the malicious intent of the Appellant to pressurize the Answering Respondent No. 1 and by joining ex-director who has already left the Answering Respondent No. 1 in present appeal would harm the reputation of the Answering Respondent No. 1. Answering Respondent No. 1 is a listed entity and joining individuals in an appeal before this Appellate Tribunal on an order of dismissal of Section 9 petition is itself a malafide attempt to arm twist individuals who are managing the Answering Respondent No. 1 in their capacity and/or holding

office in their individual capacity are being dragged in the present litigation. Joining a third party i.e. Respondent No.5 herein, who has already left the Answering Respondent No. 1 and joined other company would tarnish the reputation of the Answering Respondent No. 1. The present appeal deserves to be dismissed for such malicious attempt made by the Appellant herein.

34. Therefore, it is evident that the Answering Respondent No.1 had raised dispute which is evident from the communications prior to issuance of demand notice and had also filed arbitration proceedings which are pending and the disputes are prima facie and genuine. Respondent No.1 places its reliance on the judgment of the Hon'ble Supreme Court in ***Mobilox Innovations Pvt. Ltd. versus Kirusa Software Pvt. Ltd. (Civil Appeal Np. 9405 of 2017)***.

35. Therefore, in light of the undisputed facts of the present case as well as in light of the settled position of law, it is most respectfully submitted that the Appellant herein has failed to make out any case against the Impugned Order and thus, there is absolutely no merit in the captioned Appeal and thus, liable to be rejected. It is most respectfully submitted that the Ld. Adjudicating Authority has duly considered all facts and contentions raised by the Parties herein to dismiss the Petition filed by the Appellant herein. It is submitted that the Appellant had filed Section 9 petition wherein the debts were disputed, arbitration proceedings are pending, the invoices were not in default and the reconciliation of the accounts was also pending and thus, the Ld.

Adjudicating Authority, in its Impugned Order, has rightly dismissed the petition filed by the Appellant.

Appraisal

36. We have heard the counsels of both sides and also perused material placed on record.

37. The main issue before us is whether the Appeal is maintainable on the grounds of pre-existing disputes.

38. We note that Appellant – M/s Sri Bajrang Wind Park Developers had entered into an MoU on 07.01.2016 with the Respondent No.1 – M/s Inox Wind Infrastructure Services Limited. This MoU was signed between the two parties for commissioning of Wind Turbine Generators on or before 31.12.2016. Respondent No.1 issued various purchase / work orders to the Appellant. On the request of the Appellant, basis email dated 23.06.2018 amended Work orders with GST rates were issued on 15.07.2018 for a total amount of about Rs 18.92 crs. Respondent No.1 claims that work orders and purchase orders specify that the terms and conditions of MoU dated 07.01.2016 shall be deemed to be part of the work order. [71 APB].

39. We are informed that as per the target commissioning period, Appellant-Operational Creditor which was executing the works for the Respondent-Corporate Debtor delayed it beyond the agreed period between the parties and there is a claim that Corporate Debtor incurred huge losses and also suffered liquidated damages from its customers. The Respondent has listed various Liquidated Damages (LD) and ongoing litigations on account of delay which are noted as below:

- “a. LD of Rs.33,20,76,452/- and GST on LD to the tune of Rs.6,95,72,580/- by SJVNL and a counter claim by SJVNL for Rs.500 Crores.
- b. LD of Rs.3.15 Crores by ReNew Ltd.
- c. LD of Rs.7,34,00,000/- from Green Infracore Energy Ltd.
- d. LD of Rs.3,22,77,116/- from DJ Malpani Group
- e. Award of Rs.12,68,59,503/-, Rs.7,21,10,039/- and Rs.7,06,92,384/- to Surbhi and SJP on account of partners of the appellant.”

40. Furthermore, there was email exchange going on between them to settle the accounts, the brief description of which is noted as below.

17.08.2018 Para 7 of the impugned order	Email by Corporate Debtor raising issues and requesting the Operational Creditor to visit the office along with work completion certificates to discuss the issues.
13.11.2018 Para 10 of the impugned order	Pointing out discrepancies in the invoices
22.11.2018 Para 10 of the impugned order .	Comments on invoices were submitted with specific note that <i>“This is not the final amount considering as we have not considered LD, Generation Loss and Idel Charges which Inox has paid to its customer. This needs to be discussed separately at the time of reconciliation”</i>
05.12.2018 Para 19 of the impugned order	A detailed Email by director of Corporate Debtor stating that the Corporate Debtor has pursued again and again for completing the project and there is no response from Mr. Nadar and he is not attending calls or messages. Pointed out that huge loss is suffered in Maharashtra and the same continuing that, he has been visiting to the Maharashtra offices and Kutch multiple times for pending activities but there is no response. That, original documents are not handed over

	for Maharashtra Project and only recently the Operational Creditor has started coming to office for financial settlement. It was further pointed out that, the Corporate Debtor is open to support closing the issues and pointed out mails for reconciliation. Further, the Operational Creditor was suggested to come with documents and action plan to close the pending issues.
--	---

41. The email dated 17.08.2018, which is at 208 and 209 of APB clearly brings out discrepancies in the invoices. We find so many emails exchanged between the two parties, prior to the issuance of the demand notice issued on 02.07.2019 under Section 8 of Code. Furthermore, in Reply to the Section 8 demand notice also, the Corporate Debtor sent a notice of dispute by the Corporate Debtor to the Appellant on 17.07.2019. [page 414 and 419 of APB].

42. We note that prior to issuance of the demand notice lot of disputes were going on between the Appellant and the Operational Creditor and they cannot be described as moonshine or frivolous disputes. They are pre-existing and substantial disputes. Therefore, the Section 9 petition is not maintainable. Therefore, we do not find any infirmity in the orders of the Adjudicating Authority -the operative part which is at para 19 and 20 reproduced as under:

“19. The various correspondence between the parties shows that there was a dispute with respect to work on various counts. Also there were tax issues between them. In one of the email dated 05.12.2018, it is mentioned that "Please come and reconcile as there are many anomalies as regard to your account in totality same has to be discussed with project development and project execution along with settlement and reconciliation of Maharashtra invoices which are pending for years together. As Maruti and

Bajrang are one and the same company, hence, complete reconciliation for Gujarat and Maharashtra is must to do.

20. There was also a dispute regarding amount payable which is also admitted by the Operational Creditor. It is also pertinent to note that the Operational Creditor itself admitted that some invoices were disputed by the Corporate Debtor due to discrepancies in it. So also, the account was not finalised and discussion is needed at the time of final reconciliation.”

43. From the pleadings and particularly email exchange which is on record, one can safely come to a conclusion that these are not spurious or moonshine disputes and these were pre-existing disputes. Thus, the Company petition under Section 9 of the Code is not maintainable and cannot be allowed. Accordingly, the conclusions of the Adjudicating Authority cannot be faulted upon and the Appeal deserves to be dismissed.

44. We also find that apart from the notice of dispute by the Corporate Debtor on 04.02.2020 the Corporate Debtor had also sent a legal notice to the Operational Creditor – Appellant claiming an amount of Rs.54.5 Crores.

45. We also note that there are pending arbitration proceedings before Hon’ble Mr. Justice D.K. Jain, Former Judge, Supreme Court of India. And on 24.11.2023, an order was made rejecting the counter claim made by the Operational Creditor – Appellant, which includes the amount claimed in Section 9 Petition. Furthermore, the Arbitral Tribunal rejected the application filed by the Operational Creditor - Appellant on 15.03.2024 for recall of the order dated 24.11.2023. The Appellant has also gone to Hon’ble High Court and the proceedings are pending without any interim direction.

46. Furthermore, we also find that date of default is not mentioned in the invoices. These invoices were issued vide letter dated 27.03.2018 onwards and as per the terms and conditions of the work order and MoU. Respondent contends that the event of default will occur only after 365 days of the issue of the invoice. Since the invoice starts from 20.07.2018 to 14.05.2019, the default will happen from 2019 till 14.05.2020. We find that merit in the argument of the Respondent No.1 that the demand notice is premature, as it is issued before the default has occurred and there was no default at all.

47. Respondent No. 1 has also heavily relied upon the judgement of Hon'ble Apex Court in **Sabarmati (supra)** to argue that a communication for reconciliation would reveal existence of pre-existing dispute between the parties. The relevant observations made by the Hon'ble Apex Court are incorporated herein below:-

"In this context the meaning of the word "reconciliation" is to be looked into. Going by Black's Law Dictionary, 10th Edition, the apt meaning suitable to the situation in relation to accounting, reads thus "an adjustment of amounts so that they agree, especially by allowing for outstanding items". It is submitted by the learned Counsel for the Respondent that such a reconciliation had not taken place and also that indisputably, DRS was not formulated and approved. The aforesaid facts revealed from Annexure 40 together with the stand taken by the Respondent in the letter dated 04. 01.2013 (Annexure 36) would reveal the existence of a pre-existing dispute between the parties. In the contextual situation it is only apposite to be remindful of the observation in Mobilox Innovations (P) Ltd. {supra) that in doing the act of separating the grain from chaff the Court need not to be satisfied that the defence is likely to succeed. It is enough that a dispute exists between the parties and in other

words, what is to be seen is whether there was a plausible contention requiring investigation for the purpose of adjudication. Taking note of the nature of the dispute of the Respondent as referred hereinbefore in respect of the claim made by the Appellant, we do not find any reason to disagree with the concurrent findings of the Tribunals that there existed a 'pre-existing dispute' between the parties before the receipt of demand notice Under Section 8, IBC. In other words, the dismissal of the application Under Section 9 IBC on the ground of 'pre-existing dispute' cannot be held to be patently illegal or perverse. We also do not find any reason, in the facts and circumstances, to hold that the case set up by the Respondent was a patently feeble legal argument. At any rate, we are not inclined to brush aside the case of the Respondent as spurious. We may hasten to add here that we shall not be understood to have held that the dispute set by the Respondent regarding the dues is ultimately to be upheld. Certainly, when the expression 'pre-existing dispute' is used it will only indicate the existence of a dispute prior to the receipt of a demand notice Under Section 8, IBC, and the correctness or its truthfulness is a matter of evidence. In short, the Respondent has succeeded in raising a dispute describable as 'pre-existing dispute'. In that view of the matter once we find that the Tribunals have rightfully held that there existed a 'pre-existing dispute' between the parties there cannot be an order of remand of the matter to the Tribunal for reconsideration of Section 9 application under IBC.”

[Emphasis Supplied]

48. Respondent No.1 has relied on the landmark judgment of Hon'ble Supreme Court, in the matter of ***Mobilox Innovations Pvt. Ltd. versus Kirusa Software Pvt. Ltd. (Civil Appeal Np. 9405 of 2017)*** wherein it has clearly held the following with respect to pre-existing dispute between the Parties:

"40. It is clear, therefore, that once the operational creditor has filed an application, which is otherwise complete, the adjudicating authority must reject the application under Section 9(5)(2)(d) if notice of dispute has been received by the operational creditor or there is a record of dispute in the information utility. It is clear that such notice must bring to the notice of the operational creditor the "existence" of a dispute or the fact that a suit or arbitration proceeding relating to a dispute is pending between the parties. Therefore, all that the adjudicating authority is to see at this stage is whether there is a plausible contention which requires further investigation and that the "dispute" is not a patently feeble legal argument or an assertion of fact unsupported by evidence. It is important to separate the grain from the chaff and to reject a spurious defence which is mere bluster. However, in doing so, the Court does not need to be satisfied that the defence is likely to succeed. The Court does not at this stage examine the merits of the dispute except to the extent indicated above. So long as a dispute truly exists in fact and is not spurious, hypothetical or illusory, the adjudicating authority has to reject the application ..."

This judgement fully supports the case of the Respondent No.1 in the rejection of the Appeal.

49. Thus, in the facts and circumstances of the case, without relying on the arguments raised by the Respondent No1 that the event of default has not happened and also not relying on the pending arbitration as also misjoinder of parties, we find that owing to the pre-existing dispute, particularly due to pending reconciliation, Section 9 Petition under the Code is not maintainable and accordingly, the appeal deserves to be dismissed.

50. When the matter was taken up for pronouncement on 13.02.2026, the Counsel for the Appellant appeared and submitted that Appellant and the

Respondents have settled their dispute and they have filed an IA No. 1161 of 2026 on 13.12.2025 but this IA was not yet taken on the record by the registry. On perusal of this IA No. 1161 of 2026, which was presented in the open court, we note that it has the following prayers:

“2. That subsequent to the orders having been reserved in the present appeal, the Appellant and the Respondent have amicably resolved their disputes and have entered into a full and final Settlement Agreement.

3. That in view of the settlement arrived at between the parties, the Appellant does not wish to pursue the present Company Appeal and seeks permission of this Hon'ble Tribunal to withdraw the same with liberty to revive the Appeal in the event the Respondent fails to comply with the terms of the Settlement Agreement or the settlement otherwise fails for any reason whatsoever.

4. That the withdrawal of the Appeal will not prejudice the rights of either party, and is made bona fide and in the interest of justice.”

However, while making the prayer, the appellant has sought the following reliefs:

“A. Permit the Appellant to withdraw the present Company Appeal, in view of the settlement between the parties;

B. Grant liberty to the Appellant to revive the Appeal in the event the settlement is not complied with or otherwise fails.”

51. It will be appropriate to note our orders dated 13.02.2026 in which we have concluded as follows:

“If the appellant is limited to its relief to prayer 'A', this Tribunal would not have any difficulty in acceding to it. However, we find prayer 'B' goes tangential to prayer 'A'. Therefore, we direct notice of I.A. 1161 of 2026 to the other side.

List the matter on 19th February, 2026.”

52. Thereafter, when the matter was taken up again on 19.02.2026, we noted as follows:

“19.02.2026:

As indicated in the earlier order dated 13.02.2026, the matter came to be listed today and both sides appeared. It appears that as per the term settled between the parties there are some loose ends into which we do not propose to take notice of. Suffice to say that if the parties do not settle the matter by 26.02.2026 we will be constrained to pronounce the judgment by 27.02.2026 as the judgment is ready for pronouncement.”

53. We note that the Appellant is seeking to permit to withdraw the Appeal and also in case settlement is not complied with, it wants to revive the Appeal. The matter was not pronounced on 13.02.2026 and was taken up again on 19.02.2026, wherein a last opportunity was given to the Appellant to settle the matter by 26.02.2026, and in case the parties do not settle the matter by 26.02.2026 the judgment would be pronounced by 27.02.2026. Till date, no settlement agreement has been brought to our notice and any consent of Respondent. Accordingly, we are constrained to pronounce the judgment and accordingly, the order is being pronounced.

Orders

54. We do not find any infirmity in the orders of the Adjudicating Authority. Accordingly, we dismiss this Appeal. All related IAs are also dismissed. No orders as to costs.

**[Justice N. Seshasayee]
Member (Judicial)**

**[Arun Baroka]
Member (Technical)**

**New Delhi.
March 2, 2026.**

Pawan