

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

**Company Appeal (AT) (Insolvency) No. 158 of 2026**

[Arising out of order dated 04.12.2025 passed by the adjudicating authority  
(National Company Law Tribunal, Ahmedabad, Court 2), in  
C.P.(IB)/430(AHM)2025]

**IN THE MATTER OF:**

**Narayani Resources Pvt. Ltd. ...Appellant**

**Versus**

**Essar Power Gujarat Ltd. ...Respondent**

**Present:**

**For Appellant : Mr. Arun Kathpalia & Mr. Abhijeet Sinha, Sr. Advocates with Ms. Honey Satpal, Ms. Nipun Singhvi, Ms. Diksha Gupta, Mr. Akash Agarwalla, Mr. Aman, Mr. Jatin Seghal, D. Soni, Ms. Simran Baja, Advocates.**

**For Respondent : Mr. Krishnendu Datta, Sr. Advocate with Mr. Mahesh Agarwal, Ms. Geetika Sharma and Ms. Alina Merin Mathew, Advocates.**

**J U D G M E N T**

**ASHOK BHUSHAN, J.**

This appeal has been filed against an order dated 04.12.2025 passed by the adjudicating authority (National Company Law Tribunal (NCLT), Ahmedabad Bench, Court-II) rejecting a Section 9 application filed by the Appellant. Aggrieved by the order rejecting Section 9 application, this appeal has been filed.

**2.** Brief facts of the case necessary to be noticed for deciding the appeal are:

- i. The corporate debtor Essar Power Gujrat Limited (EPGL) is fully operational power generating company which supplies to state utility.
- ii. The appellant supplied coal to EPGL under Independent Supply Agreement executed on different dates between March 2023 to June 2024. Various Sale & Purchase Contracts were executed between the parties. Various consignments were delivered to the corporate debtor. Last Sale & Purchase Agreement was entered between the parties on 24.06.2024. Various payments from time to time were made by the corporate debtor.
- iii. The appellant issued a demand notice under Section 8 dated 11.08.2025 to the corporate debtor, claiming an outstanding amount of ₹85,04,04,994/- as on 04.08.2025, date of default was mentioned as 25.07.2024.
- iv. Demand notice claimed the amount towards the supply of quantities of scheme coal and invoices issued thereunder. The demand notice was replied by the corporate debtor by detail reply dated 21.08.2025, which reply was referred as noticed of dispute. In the reply to demand notice, corporate debtor pleaded that on 16.01.2025, the parties have reached the settlement under which ₹107 crore was to be paid. In the reply, corporate debtor has given details as to how the settlement amount has been paid. It was pleaded that as per settlement, operational creditor was to give debit note of ₹22.50 crore which debit note was not issued. The corporate debtor has further made payment of ₹8 crore as an advance towards interest which need to be refunded.

- v. The reply to demand notice was again replied by a rejoinder on behalf of the appellant dated 08.10.2025, and thereafter Section 9 application was filed by the operational creditor on 17.10.2025.
- vi. On 17.11.2025, the application came to be first listed before the adjudicating authority. The respondent appeared before the adjudicating authority and raised objection regarding maintainability. Adjudicating Authority granted one day time to the corporate debtor to file objection to submit a one page note of his objection by way of an affidavit and the matter was posted for 19.11.2025.
- vii. On 19.11.2025, adjudicating authority noticed that note has been received, but it is not by affidavit. Matter was heard and order reserved on maintainability of the application on 19.11.2025. Adjudicating authority, after hearing the parties passed impugned order rejecting Section 9 application. Adjudicating authority after hearing the parties came to the conclusion that there is a genuine dispute regarding reconciliation which is a Pre-Existing Dispute. It was held that unreconciled settlement figures cannot be basis for Section 9 application. When the parties have dispute and reconciliation which are subject to arbitration after mutual consideration of settlement, the said cannot be entertained by the adjudicating authority. The application was rejected. Following observations were made by adjudicating authority in paragraphs 10 & 11:

*“10. We have also perused the various judgments cited by the Ld. Senior Counsel for applicant and the respondent. The applicant may have an option after*

*the mediation award to proceed before IBC under the relevant provisions as the contract binds both the parties only for arbitration process and before civil court. Further reconciliation of differences in financial transactions where the commercial trade has been effected will have to be on one to one basis of the invoices, failing which the residual amounts are not identifiable for the debt especially when there is mutual exchange of the balances and its confirmation and that the stated credit invoices given cannot be produced before this tribunal which turns out to be fraudulent/drafts on arguments. The dispute regarding reconciliation appears to be genuine and is pre existing and is supported by evidence given even by the applicant. Even though the respondent appeared and has filed his reply, the applicant has given enough documents to decide the matter, while the inputs on the reconciliation process are enough to decide the matter. We do not arbitrate on the amount payable by either of the parties as the matter is now before arbitration and this application with unreconciled settlement figures cannot be basis for initiating Sec 9 application under IBC 2016. This is not a recovery forum when the parties have dispute and reconciliation, which are subject to arbitration after mutual consideration of a settlement, which is built in the stated Purchase and Sale contract of both parties.*

*11. We rely upon the judgment of Hon'ble Supreme Court in 58 Engineers Vs Hindustan Petroleum Corporate Limited and others, (REEDLAW 2022 NCLAT Del 07549 and Sabarmati Gas Limited Vs Shah Alloys Limited (REEDLAW 2023 SC 05137), where in it observed that the existence of email correspondence disputing the claim and seeking reconciliation constituted a pre existing dispute under the code.”*

viii. Challenging the order, the appellant has come up in this appeal.

**3.** We have heard learned Sr. counsels Mr. Arun Kathpalia & Mr. Abhijeet Sinha appearing for the appellants as well as learned Sr. counsel Mr. Krishnendu Datta appearing for the respondent.

**4.** Learned counsel for the appellant submits that respondents have filed a note by an affidavit which has been relied by the adjudicating authority

without giving an opportunity to the appellant which violates the principle of natural justice. Learned counsel for the appellant referring to the notice of dispute dated 21.08.2025 contended that according to own showing of the corporate debtor, the amount of more than ₹10 crore is admittedly due. Learned counsel for the appellant has referred to paragraph 20 of the reply to the demand notice dated 21.08.2025. It is submitted that when there is an admitted amount due, Section 9 application cannot be rejected. It is submitted that appellant has supplied coal under High Seas Sale Agreement to the corporate debtor. Corporate debtor having acknowledged by the balance confirmation that there are dues of ₹107 crore which dues having not been cleared, there was admitted outstanding necessitating initiation of Section 9. It is submitted that the mere fact that agreement between the parties provides for an arbitration clause that cannot preclude the appellant to initiate proceeding under Section 9, which is statutory remedy provided.

**5.** Learned Sr. counsel Mr. Krishnendu Datta appearing for the respondent submits that the corporate debtor has admitted dues of ₹107 crore with regard to which conciliation took place between the parties on 16.01.2025. It is submitted that settlement was agreed between the parties of the manner of payment of ₹107.75 crore, the principal amount of ₹58.30 crore was admittedly paid with regard to other part of amount, parties have agreed and settled. It is submitted that when demand notice was replied by the corporate debtor, disputing the claim and issuing a notice of dispute, Section 9 application had to be rejected. It is submitted that the issues sought to be raised by the appellant could not have been gone into or decided in

Section 9 application. Proceeding under Section 9 cannot be utilised as a recovery measure to recover disputed amount. It is submitted that adjudicating authority has rightly dismissed the application. Learned counsel for the respondent further submitted that the respondent itself has initiated a proceeding under Section 11 of the Arbitration & Conciliation Act, 1996, before the Bombay High Court with respect to contract dated 24.06.2024 and at the time of hearing of the application, the operational creditor itself prayed that dispute pertaining to all contracts, including contract dated 24.06.2024, be sent to an arbitration. Bombay High Court disposed of the proceedings on 20.01.2026, directing for appointment of arbitrator to decide the dispute between the parties regarding Agreements/Contracts. The Agreement/Contracts which are subject matter of Section 9 application being also covered by the order referring the dispute. It is not open for the appellant to pray for admission of Section 9 application to press this appeal.

**6.** We have considered the submissions of the counsel for the parties and perused the records.

**7.** The first submission of the counsel for the appellant is that note which was permitted by the adjudicating authority was filed on an affidavit to which the corporate debtor had no opportunity to rebut. While noticing the facts, we have noted that on first listing of application under Section 9, the corporate debtor has appeared and raised objection regarding maintainability, adjudicating authority, on which date granted one day time to the corporate debtor to file one page note of objection by way of an affidavit. Thus, the adjudicating authority itself permitted the note on the objection regarding

maintainability of the application by an affidavit. Adjudicating authority has not issued notice to the corporate debtor or called for any reply. Note was only related to the maintainability of the application, we thus do not see any violation of principles of natural justice. Adjudicating authority permitting the one page note to be filed on affidavit. In any view of the matter, we need to examine the facts and pleadings as brought by the operational creditor, the appellant herein to find out as to whether the application under Section 9 has been wrongly rejected or ought to have been admitted by adjudicating authority. We, thus do not find any error in the procedure by adjudicating authority in giving liberty to the corporate debtor to file one page note on the maintainability within one day by an affidavit. The idea was to give the objection regarding maintainability in the note and corporate debtor was not required to file any reply to Section 9 application.

**8.** Operational creditor is entitled to initiate proceeding for operational debt as per the scheme as provided under Sections 8 & 9 of the IBC. Section 8(1) of the IBC provides that operational creditor on occurrence of default is to deliver a demand notice. Under Section 8(2) corporate debtor within 10 days of the receipt of notice has to bring into notice of the operational creditor existence of dispute. Section 8(1) & 8(2) of the IBC are as follows:

***“8. Insolvency resolution by operational creditor.***

*(1) An operational creditor may, on the occurrence of a default, deliver a demand notice of unpaid operational debt<sup>2</sup> or copy of an invoice demanding payment of the amount involved in the default to the corporate debtor in such form and manner as may be prescribed.*

*(2) 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, if any, or record of the pendency of the suit or arbitration proceedings filed before the receipt of such notice or invoice in relation to such dispute;*

*(b) the [payment] of unpaid operational debt—*

*(i) by sending an attested copy of the record of electronic transfer of the unpaid amount from the bank account of the corporate debtor; or*

*(ii) by sending an attested copy of record that the operational creditor has encashed a cheque issued by the corporate debtor.*

*Explanation.—For the purposes of this section, a “demand notice” means a notice served by an operational creditor to the corporate debtor demanding payment of the operational debt in respect of which the default has occurred.”*

**9.** Section 9 provides for initiation for application of CIRP. Section 9(1) provides that after expiry of period of 10 days from the date of delivery of demand notice if operational creditor does not receive payment from the corporate debtor or notice of dispute under sub-Section (2) of Section 8 operational creditor may file an application. Section 9(1) of the IBC is as follows:

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

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

**10.** The above scheme clearly indicates that in two eventualities, the operational creditor after service of demand notice can proceed to file an application **(i)** where no payment has been received and **(ii)** when notice of dispute under Section 8(2) has not been received.

**11.** When we come to the facts of the present case, the demand notice was issued by operational creditor on 11.08.2025. The notice was replied within the time by the corporate debtor by reply dated 21.08.2025. The subject of the reply is to the following effect:

*“Sub: Notice of dispute and reply on behalf of Essar Power Gujarat Limited to Purported Demand Notice dated 11 August 2025.”*

**12.** The reply to the demand notice is a very detailed reply capturing the transaction between the parties. It was specifically pleaded by the corporate debtor that nothing is payable by the corporate debtor to the operational creditor. In the above reference, we need to notice averments in the reply to demand notice under heading C **“Without prejudice, nothing is payable by EPGL”**. Paragraphs 18 to 24 following has been stated:

**“C. WITHOUT PREJUDICE, NOTHING IS PAYABLE BY EPGL**

*18. There is no outstanding whatsoever due from EPGL to NRPL. In fact, an advance of Rs. 8 crores paid by EPGL is with NRPL and should be refunded. Considering this, there is no question of any default on the part of EPGL and particularly in view of the agreed position between the parties evidenced by a WhatsApp message dated 20 March 2025, which was acted upon by NRPL and EPGL on the very same day.*

*19. On 16 January 2025, EPGL and NRPL reached a settlement under which the Rs. 107 Crores payable by EPGL was to be divided in the following manner:*

(a) As on 16 January 2025, Rs. 107 crores was divided into two parts principal and settlement amount.

(b) The principal became Rs. 58.30 crores.

(c) The remaining Rs. 49.42 crores was to be settled through provision of a credit note of Rs.26.92 crores to be issued by NRPL in favour of EPGL and provision of Rs. 22.50 crores which would become payable as interest once the debit note was issued by NRPL to EPGL.

(d) Out of the principal sum of Rs. 58.30 crores, a sum of Rs. 54.3 crores was paid before 20 March 2025. Thereafter, a sum of Rs. 4 crores was paid on 20 March 2025, which meant that the entire sum of Rs. 58.30 crores stood paid as on 20 March 2025.

(e) Credit notes of Rs. 15.7 Crores and Rs. 11.22 Crores were issued on 16 January 2025 and 20 March 2025, amounting to Rs. 26.92 Crores. A copy of the credit note dated 16 January 2025 and 20 March 2025 is annexed hereto and marked as **ANNEXURE 1** and **ANNEXURE 2**.

(f) Insofar as the provision of interest is concerned, NRPL never issued a debit note for Rs. 22.50 crores and to that extent, there was no amount payable by EPGL towards Rs. 22.50 Crores.

20. This settlement set out above was evidenced by the credit notes issued by NRPL, as well as an exchange on WhatsApp between authorised representatives of EPGL and NRPL. On 20 March 2025 at 11:26 AM, Mr. Pravin Katre, Joint General Manager, EPGL, sent a WhatsApp message to Mr. Ankur Aggarwal, the Chief Executive Officer of NRPL, stating:

"As per reco signed on 16 Jan

Total payable to NRPL 34.14 Cr.

Total payable to interface through NRPL-24.16 Cr.

Total Rs. 58.3 Cr.

Paid till date on both – 54.3. Cr

Pending-4 cr.

Other than that interest of 22.50 Cr is pending which to be cleared from April onwards.

*Other than this credit note of-12 Cr is needed to be issued on priority."*

*A printout of the screenshot of the WhatsApp message dated 20 March 2025 is annexed as **ANNEXURE 3**.*

*21. The agreed position set out in the WhatsApp message dated 20 March 2025 was acted upon by NRPL which, on the very same day, issued a credit note for Rs. 11.22 crores (i.e., Rs. 12 Cr). Thereafter, the outstanding due of Rs. 4 crores was paid by EPGL to NRPL on 20 March 2025 itself.*

*22. With an ulterior motive, NRPL has suppressed this material evidence of the agreed position in its Purported Demand Notice for mala fide reasons. Clearly therefore, the statements provided by NRPL in its Purported Demand Notice are misleading and do not set out the correct picture. This is suppression at its highest, and EPGL reserves its right to take appropriate action against the same.*

*23. As per the agreed position set out above, NRPL was to issue a debit note for interest and the same has never been issued. A copy of the supporting email dated 15 January 2025 is herewith annexed and marked as **ANNEXURE 4**. Despite this, and in good faith, EPGL paid a sum of Rs. 8 crores as an advance towards interest, and the same needs to be refunded back to EPGL as NRPL issued no debit note, and there is no acceptance of any debit note from EPGL. Through this response, EPGL is seeking a refund of Rs. 8 crores along with interest and costs from NRPL.*

*24. All the while, both EPGL and NRPL were negotiating to settle their disputes about the damages payable by NRPL for losses caused by NRPL's actions. In light of NRPL's bad faith actions, EPGL will initiate the dispute resolution mechanism under the contractual arrangements between them."*

**13.** In addition to the above under heading "D" it was pleaded that there is a Pre-Existing Dispute on losses suffered by EPGL.

**14.** When we look into paragraph 19 of the reply to the demand notice, it was a clear case of the corporate debtor that the outstanding dues of ₹107 crore payable by the corporate debtor to operational creditor were settled on

16.01.2025, principal amount of ₹58.30 crore and remaining amount of ₹49.42 crore, paragraph 19 clearly mention the manner in which the said liability has to be discharged. Paragraph 20 of the reply to the demand notice which was in reference to the settlement and is reflected in the Whatsapp between the Authorised Representatives of the corporate debtor and operational creditor dated 20.03.2025. The corporate debtor's clear case is that entire principal amount has been paid and the credit note has also been received from operational creditor as per settlement and advance interest has also been paid by corporate debtor to ₹8 crore, whereas, debit note as was agreed between the parties of ₹22.5 crore has not been issued.

**15.** Hon'ble Supreme Court in celebrated judgement of **'Mobilox Innovations Private Limited' Vs. 'Kirsua Software Pvt. Ltd.'** reported in **[(2018) 1 SCC 353]** has after noticing the statutory scheme of IBC under Sections 8 & 9 has laid down the principles and proposition with regard to Section 9 application. Hon'ble Supreme Court in the above judgement in paragraphs 33 and 51 laid down following:

***"33.*** *The scheme under Sections 8 and 9 of the Code, appears to be that an operational creditor, as defined, may, on the occurrence of a default (i.e. on non-payment of a debt, any part whereof has become due and payable and has not been repaid), deliver a demand notice of such unpaid operational debt or deliver the copy of an invoice demanding payment of such amount to the corporate debtor in the form set out in Rule 5 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 read with Form 3 or 4, as the case may be [Section 8(1)]. Within a period of 10 days of the receipt of such demand notice or copy of invoice, the corporate debtor must bring to the notice of the operational creditor the existence of a dispute and/or the record of the*

*pendency of a suit or arbitration proceeding filed before the receipt of such notice or invoice in relation to such dispute [Section 8(2)(a)]. What is important is that the existence of the dispute and/or the suit or arbitration proceeding must be pre-existing i.e. it must exist before the receipt of the demand notice or invoice, as the case may be. In case the unpaid operational debt has been repaid, the corporate debtor shall within a period of the self-same 10 days send an attested copy of the record of the electronic transfer of the unpaid amount from the bank account of the corporate debtor or send an attested copy of the record that the operational creditor has encashed a cheque or otherwise received payment from the corporate debtor [Section 8(2)(b)]. It is only if, after the expiry of the period of the said 10 days, the operational creditor does not either receive payment from the corporate debtor or notice of dispute, that the operational creditor may trigger the insolvency process by filing an application before the adjudicating authority under Sections 9(1) and 9(2). This application is to be filed under Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 in Form 5, accompanied with documents and records that are required under the said form. Under Rule 6(2), the applicant is to dispatch by registered post or speed post, a copy of the application to the registered office of the corporate debtor. Under Section 9(3), along with the application, the statutory requirement is to furnish a copy of the invoice or demand notice, an affidavit to the effect that there is no notice given by the corporate debtor relating to a dispute of the unpaid operational debt and a copy of the certificate from the financial institution maintaining accounts of the operational creditor confirming that there is no payment of an unpaid operational debt by the corporate debtor. Apart from this information, the other information required under Form 5 is also to be given. Once this is done, the adjudicating authority may either admit the application or reject it. If the application made under sub-section (2) is incomplete, the adjudicating authority, under the proviso to sub-section (5), may give a notice to the applicant to rectify defects within 7 days of the receipt of the notice from the adjudicating authority to make the application complete. Once this is done, and the adjudicating authority finds that either there is no repayment of the unpaid operational debt after the invoice [Section 9(5)(i)(b)] or the invoice or notice of payment to the corporate debtor has been delivered by the operational*

creditor [Section 9(5)(i)(c)], or that no notice of dispute has been received by the operational creditor from the corporate debtor or that there is no record of such dispute in the information utility [Section 9(5)(i)(d)], or that there is no disciplinary proceeding pending against any resolution professional proposed by the operational creditor [Section 9(5)(i)(e)], it shall admit the application within 14 days of the receipt of the application, after which the corporate insolvency resolution process gets triggered. On the other hand, the adjudicating authority shall, within 14 days of the receipt of an application by the operational creditor, reject such application if the application is incomplete and has not been completed within the period of 7 days granted by the proviso [Section 9(5)(ii)(a)]. It may also reject the application where there has been repayment of the operational debt [Section 9(5)(ii)(b)], or the creditor has not delivered the invoice or notice for payment to the corporate debtor [Section 9(5)(ii)(c)]. It may also reject the application if the notice of dispute has been received by the operational creditor or there is a record of dispute in the information utility [Section 9(5)(ii)(d)]. Section 9(5)(ii)(d) refers to the notice of an existing dispute that has so been received, as it must be read with Section 8(2)(a). Also, if any disciplinary proceeding is pending against any proposed resolution professional, the application may be rejected [Section 9(5)(ii)(e)].

**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.”*

**16.** Section 9(5)(ii) provide as follows:

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

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

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

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

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

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

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

*(e) any disciplinary proceeding is pending<sup>4</sup> against any proposed resolution professional:*

*Provided that Adjudicating Authority, shall before rejecting an application under sub-clause (a) of clause (ii) give a notice to the applicant to rectify the defect in his application within seven days of the date of receipt of such notice from the adjudicating Authority.*

**17.** The present is the case where after receipt of demand notice, the notice of dispute was sent by the corporate debtor. As per the statutory scheme when notice of dispute is sent by corporate debtor, the application deserves to be rejected. However, the Hon’ble Supreme Court has laid down that dispute sought to be raised in notice of dispute has not to be patently feeble

legal argument or an assertion of fact unsupported by evidence. It was held that dispute truly exists in fact and is not spurious, hypothetical or illusory. Thus, even if the notice of dispute has been given, which contains the patently feeble legal argument or an assertion of fact unsupported by evidence and is spurious and illusory, adjudicating authority can still proceed to admit application and reject the defence which can be said to be a moonshine defence. The law on the subject has again been reiterated by the Hon'ble Supreme Court in '**Sabarmati Gas Limited' Vs. 'Shah Alloys Ltd.'**' reported in [(2023) 3 SCC 229] where in the above case, Hon'ble Supreme Court has examined the expression reconciliation. In paragraphs 55, 56 & 57, following was laid down:

*“55. In this context the meaning of the word “reconciliation” is to be looked into. Going by Black's Law Dictionary, 10th Edn., 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 4-1-2013 (Annexure 36) would reveal the existence of a pre-existing dispute between the parties.*

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

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

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

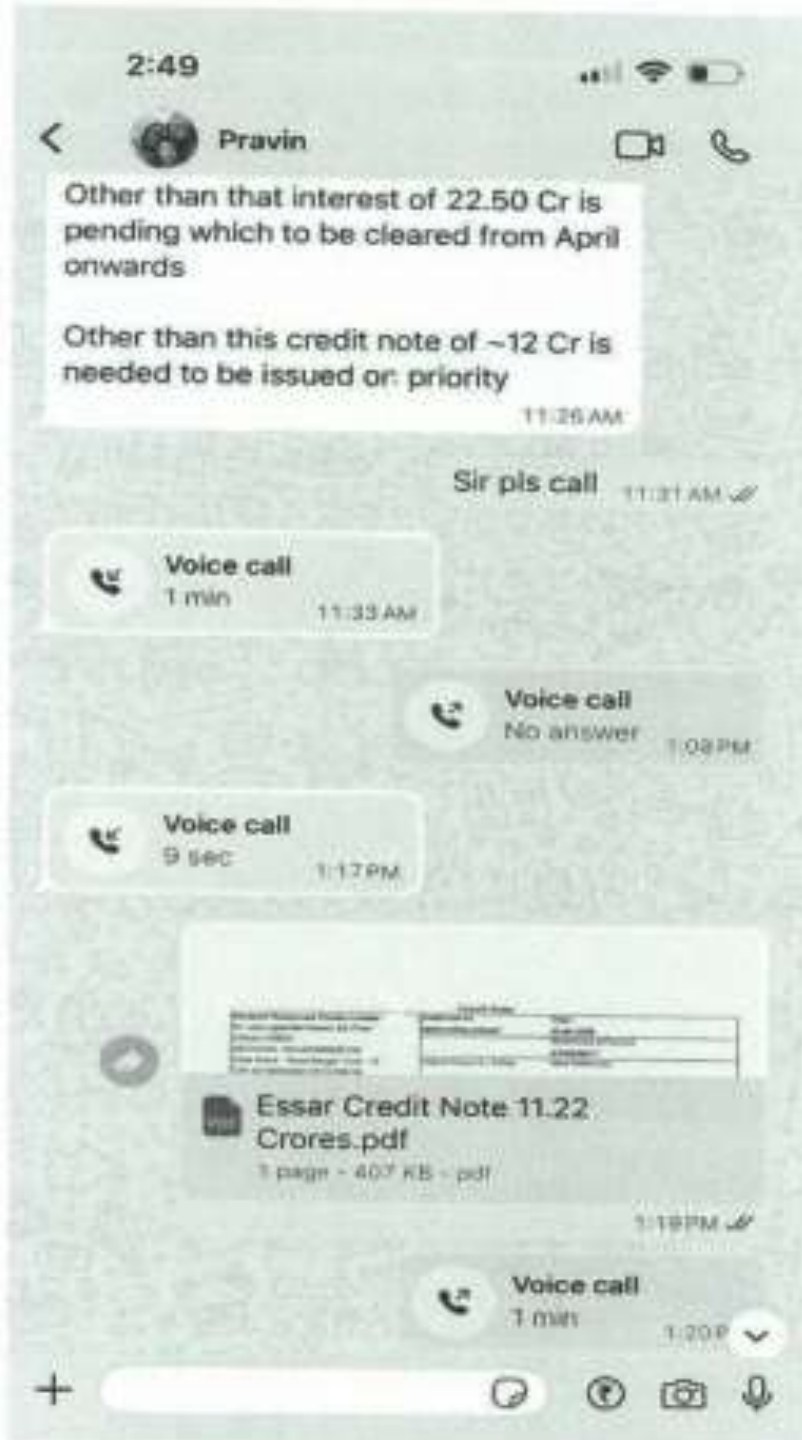
**18.** The fact that reconciliation took place between the parties, itself indicates that there was dispute between the parties which according to the respondent was resolved on 16.01.2016, whereas, according to the appellant, the payments under the alleged reconciliation has not yet been made and there was no final reconciliation. It is to be noticed that after receiving the notice of dispute, appellant also filed a rejoinder on 08.10.2025. When we look into the averments in the rejoinder, the averments itself highlight disputed issues between the parties regarding the claim and settlement. It was pleaded by the appellant that although there were several discussions regarding outstanding amount but no conclusive was ever finalised between

the parties. Reply to paragraphs 18 to 24 of the reply to demand notice is in paragraph 29 of the rejoinder. Paragraphs 29 & 30 following was stated:

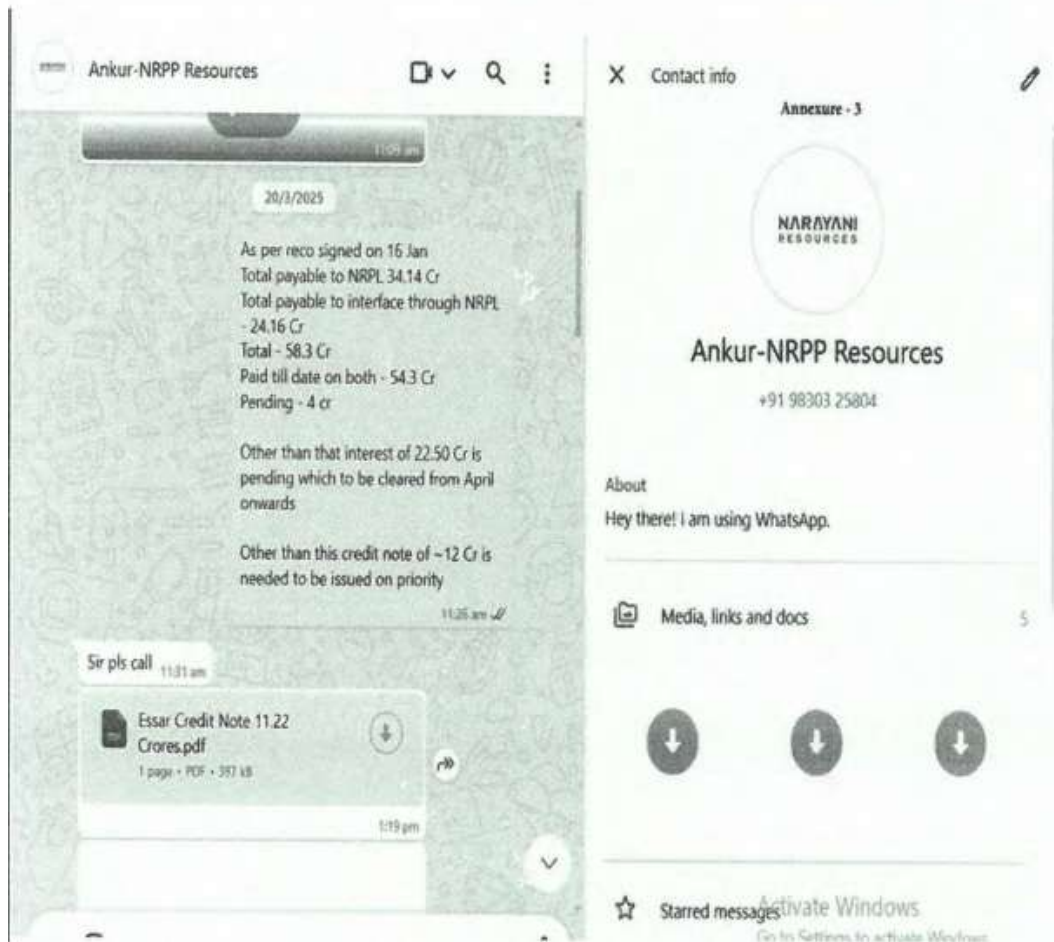
*“29. The allegations contained in paragraphs 18 to 24 of EPGL's reply are denied in their entirety. It is clarified that while discussions between Mr. Ankur Agarwal of M/s Narayani Resources Private Ltd and Pravin Katre of Essar Power Gujarat Limited”) on outstanding amount were held on several occasions, no conclusive was ever finalized between the parties. The alleged reliance on a WhatsApp message of 20 March 2025 is fundamentally misplaced. The screenshot of the WhatsApp exchange provided by EPGL is misleading and doctored, as it purposefully hides three intervening voice calls between the parties in order to create a false impression, **EPGL is guilty of fabrication and suppression and has been purposefully doing such act to create artificial dispute to illegally get out from the notice of dispute.** The complete and accurate record of the exchange, including the omitted voice calls, demonstrates that the text relied upon by EPGL formed part of an ongoing and inconclusive discussion, not a final agreement.*

*30. The three omitted voice calls, when taken into account, reveal the true sequence of events. After receiving the so-called "settlement" message, Mr. Ankur Agarwal of NRPL responded with "Sir please call." During the subsequent voice call, Mr. Ankur Agarwal specifically requested clearance of long-pending dues. In response, Mr. Pravin Katre of EPGL., asked NRPL to share a draft credit note so that the matter could be placed for internal discussions with the management of the EPGL to convince them that based on draft credit notes, the parties are discussing for modalities of payment and in the meantime some of the outstanding payment can be released to NRPL. Mr. Ankur replied that he would confirm and revert shortly. In a later call, Mr. Ankur Agarwal informed Mr. Pravin Katre that a draft credit note would be shared for internal discussions of EPGL and should not be treated as final document. He also requested that at least part of the outstanding dues be cleared immediately. Pursuant to this, Mr. Ankur Agarwal shared the draft credit note and requested immediate payment. Only thereafter did EPGL transferred Rs. 4 crores. This*

sequence clearly establishes that the draft credit notes were never binding instruments but were merely shared in good faith to facilitate payment of long-overdue dues. Relevant correct extract of whatsapp conversation is reproduced herein:



(Genuine Image of the Screenshot of the Whatsapp as per Mobile of Mr. Ankur Agarwal)



*(Image of the Screenshot of the Whatsapp as placed in the Notice of dispute and reply on behalf of Essar Power Gujarat Limited to Purported Demand Notice dated 11 August 2025)*

**19.** In paragraph 31, it is pleaded that the draft reports were shared for prospective discussions or mobilities of payment and they cannot be treated as binding on officially communicated document.

**20.** The averments made in the rejoinder itself reflects the events which happened on 16.01.2025 and 20.03.2025 between the parties including the Whatsapp Chat on 20.03.2025. The dispute between the parties regarding reconciliation and settlement is very much apparent from reply to demand notice and the rejoinder. Thus, the above dispute clearly exists much before issuance of demand notice. Thus, the defence which was raised by the

corporate debtor in its reply to demand notice was not feeble contention unsupported by evidence. It is settled law that what the adjudicating authority is to see as to whether there is a plausible contention which requires further investigation and dispute is not a patently feeble legal argument or an assertion of fact unsupported by evidence. Hon'ble Supreme Court has laid down that at this stage, the adjudicating authority is not to conclusively decide as to whether the defence taken shall ultimately succeed or not. Looking to the materials on record including the notice of dispute, we are of the view that what was raised by the respondent was a plausible contention and cannot be said to be spurious dispute or illusionary. Section 9 proceedings are not there to resolve above contractual issues which are to be determined in appropriate proceedings.

**21.** Learned counsel for the respondent has also pointed out that respondent itself has filed an application under Section 11 of the Arbitration & Conciliation Act, 1996, before the Hon'ble Bombay High Court being **Commercial Arbitration Application (L) No.39178/2025**, where Bombay High Court has passed an order on 20.01.2026, in which order, it was on the request of the appellant herein that all disputes between the parties regarding Contractual Agreement has been referred to. The subject matter of Section 9 application is fully covered by the order dated 20.01.2026. It is useful to notice paragraphs 3 & 4 which are as follows:

*“3. While this Court would have gone ahead with the constitution of the Arbitral Tribunal in view of the clause in the Sale and Purchase Contract dated 24 June 2024, the learned counsel appearing for the Respondent submits that there are numerous other*

*Agreements/Contracts executed between the parties, which have also given rise to disputes and differences. He therefore submits that the Applicant cannot be permitted to seek constitution of Arbitral Tribunal selectively in respect of Sale and Purchase Contract dated 24 June 2024. According to the learned counsel for the Respondent, following are the Agreements/Contracts out of which also, disputes and differences have arisen between the parties:*

- i) Contract Agreement dated 16.03.2023.*
- ii) Contract Agreement dated 24.03.2023,*
- iii) Contract Agreement dated 13.04.2023.*
- iv) Contract Agreement dated 19.04.2023,*
- v) Contract Agreement dated 19.09.2023.*
- vi) Contract Agreement dated 13.11.2023,*
- vii) Contract Agreement dated 24.04.2024 and*
- viii) Two Contract Agreements dated 24.06.2024.*

*4. The learned counsel for Respondent makes a request that a common reference to the Arbitral Tribunal be made for resolution of disputes and differences arising out of all the Contracts/Agreements enumerated above. The learned counsel appearing for Applicant is agreeable to the suggestion. Accordingly, this Court is proceeding to make common reference of disputes between the parties arising out of all the Agreements/Contracts at the request of the Respondent. By consent of the parties, the seat of the Arbitration is agreed at Mumbai.”*

**22.** In view of the above order of the Bombay High Court, it is clear that dispute between the parties including the dispute which are subject matter of the Section 9 application has been referred to the arbitrator with the consent of the parties. The corporate debtor has filed the arbitration application only with regard to one Agreement dated 24.06.2024, and it was respondent who prayed before the High Court that other dispute with regard to different other contracts may also referred to, which was accepted.

**23.** In view of the foregoing discussions, we do not find any error in the order of the adjudicating authority dismissing the Section 9 application. There is no merit in the appeal. Appeal is dismissed.

**[Justice Ashok Bhushan]  
Chairperson**

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

**NEW DELHI**

**10<sup>th</sup> April, 2026**

*himanshu*