IN THE NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD
COURT – 2

ITEM No.301
CP(IB)/318(AHM)2022

Proceedings under Section 9 IBC

IN THE MATTER OF:

Harri Wind Farms ....**Applicant**
V/s
M/s.Suzlon Energy Limited ....**Respondent**

Order delivered on: 31/07/2026

Coram:
Mrs. Chitra Hankare, Hon'ble Member(J)
Dr. Velamur G Venkata Chalapathy, Hon'ble Member(T)

ORDER

This case is fixed for pronouncement of order

The order is pronounced in open court vide separate sheet.

Sd/-
DR. V. G. VENKATA CHALAPATHY
MEMBER (TECHNICAL)

Sd/-
CHITRA HANKARE
MEMBER (JUDICIAL)

SJ/AP

IN THE NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD (COURT - II)

COMPANY PETITION (IB) 318 (AHM) 2022

(Application under Section 9 Read with rule 6 of the Insolvency and Bankruptcy Rules, 2016)

<u>In the matter of:</u>

M/s. Harri Wind Farms
Registered office:
4/50, Adivalli, Puduppalayam (PO),
Madauthukulam (TK), Tirupur, Tamil Nadu
Communication Address:
C/O R. Dinesh, 10, Vivekananda Nagar,
Dindigul - 624001, Tamil Nadu

.....Petitioner/ Operational Creditor

Versus

M/s. Suzlon Energy Limited
Suzlon 5, Shrimali Society,
Near Shri Krishna Complex,
Navrangpura Ahmedabad - 380009
Gujarat

..... Respondent/ Corporate Debtor

Order pronounced on 31.07.2026

Coram:
MRS. CHITRA HANKARE
HON'BLE MEMBER (JUDICIAL)

MR. VELAMUR G VENKATA CHALAPATHY
HON'BLE MEMBER (TECHNICAL)

-SD-

Sd/-

Present:

For the Petitioner : Mr. Pratik Thakkar, Adv.
For the Respondent : Mr. Saurabh Soparkar, Sr. Adv and Mr. Ravi Pahwa, Adv.

JUDGEMENT

1. This application is filed by the Operational Creditor viz, M/s. Harri Wind Farms, a partnership firm under Section 9 of Insolvency and Bankruptcy Code, 2016 seeking initiation of Corporate Insolvency Resolution Process (CIRP) as against the Corporate Debtor viz. M/s. Suzlon Energy Limited for having default of an amount of Rs. 9,66,01,381/- along with upto date interest until 26.08.2022. The date of default is submitted to be 07.01.2020. During the pendency of the present Company Petition, this Tribunal vide order dated 16.04.2026 in IA No. 1478 of 2025, allowed the application for substitution of Suzlon Energy Limited in place of the original Corporate Debtor M/s Suzlon Gujarat Wind Park Limited, pursuant to approved Schemes of Demerger and Amalgamation.

2. The averments made by the petitioner in the petition are as follows:

i. The Petitioner submits that the original Corporate Debtor i.e., M/s Suzlon Gujarat Wind Park Limited is engaged in the business of manufacturing and commissioning Wind Turbine

Generators (WTGs) at places suitable for generating wind-power. It is submitted that the Suzlon Energy Limited (SEL), the holding Company of the original Corporate Debtor, identified Kulathupalayam Village, Tirupur, Tamil Nadu, suitable for commissioning wind mills and therefore decided to set up windmills each having capacity to produce 2.1MW power under the 10(1) Scheme of TANGEDCO.

ii. The Applicant submits that establishment of a 2.1 MW Wind Turbine Generator (WTG) involves a series of technical and statutory compliances. It is submitted that after conducting wind studies to identify a suitable site, an application for Power Evacuation (PE) licence is submitted to TANGEDCO under the applicable scheme along with the prescribed fee. Thereafter, land parcels are procured and pooled, and No Objection Certificates (NOCs) are obtained by furnishing lease documents for a minimum period of 20 years and satellite coordinates. TANGEDCO then conducts a load flow study and grants PE connectivity upon fulfilment of eligibility criteria. It is further submitted that at the commissioning stage, additional compliances, including security deposits, construction of a pooling substation and transmission infrastructure, are

Sd/-

-SD-

completed before TANGEDCO evacuates the generated power through its grid.

iii. It is submitted that since these activities involve considerable time, expenditure and coordination with various authorities, Suzlon Energy Limited (SEL), the holding company of the original Corporate Debtor, entered into a Memorandum of Understanding (MoU) dated 24.01.2011 (subsequently altered by SEL to 28.07.2011) with the Applicant for procurement of land parcels, NOCs and PE licences for a proposed 25 MW wind project at Kulathupalayam Village. It is submitted that under the MoU, the Applicant was required to procure 12 land parcels within 90 days, obtain NOCs for a minimum capacity of 25 MW, while SEL was required to register the procured lands within 30 days thereafter and furnish a Letter of Credit of Rs. 2 crore for a minimum period of six months, which, according to the Applicant, was never provided. The Applicant submits that it fulfilled its obligations within the stipulated time and incurred the necessary expenditure however, SEL acquired only three of the twelve land parcels, preventing the Applicant from recovering its costs. The Applicant further submits that, based on SEL's subsequent plans, it procured additional NOCs and obtained a

Sd/-

-SD-

50 MW PE licence by pooling NOCs from fifteen land parcels, following which SEL remained inactive for nearly four years.

iv. The Applicant submits that, while the Memorandum of Understanding with Suzlon Energy Limited (SEL) remained subsisting, the original Corporate Debtor, M/s Suzlon Gujarat Wind Park Limited, entered into a Development Agreement dated 27.08.2015 whereby it entrusted the Applicant with procurement of land parcels, No Objection Certificates (NOCs) and Power Evacuation (PE) connectivity. It is submitted that, despite the Applicant performing its obligations and incurring substantial expenditure, the Respondent acquired only four land locations, leaving the Applicant to bear the costs of procuring the remaining lands and obtaining the requisite NOCs. The Applicant further submits that, although the Development Agreement was executed by the Respondent, the PE connectivity continued in the name of SEL. It is submitted that the Applicant's 50 MW PE licence was valid on the date of the Agreement but was cancelled by TANGEDCO on 07.09.2015 pursuant to its policy of cancelling unutilised PE licences, while permitting fresh applications.

v. It is submitted that thereafter, on 26.09.2015, the Respondent applied for 100 MW PE connectivity in the name of SEL by utilising the NOCs procured by the Applicant for 24 locations (16

Sd/-

Sd/-

locations together with 8 additional locations covered under the Agreement). It is submitted that at the Respondent's request, the Applicant issued a No Objection Letter dated 05.10.2015 permitting utilisation of its NOCs, pursuant to which TANGEDCO granted 100 MW PE connectivity to SEL on 11.04.2016. The Applicant submits that the PE connectivity and related compliances were in any event intended to be transferred to the Respondent, and no additional licence fee was payable for obtaining 100 MW instead of 50 MW. It is further submitted that after the Respondent obtained 100MW PE connectivity by utilising the Applicant's NOCs, the Applicant raised invoices dated 25.07.2016 for Rs.1.92 crore towards 16 locations and Rs.1.32 crore towards the remaining 8 locations in terms of the Development Agreement.

vi. The Applicant further submits that, by email dated 26.07.2016, it furnished to Mr. Arun Prasad, an official of the Respondent, details of the expenditure incurred towards procurement of eight land locations which had not been acquired by the Respondent, in preparation for a meeting scheduled on 04.08.2016 to discuss the pending payments and procurement of the remaining land parcels. It is submitted that, after considering the invoices and expenditure details, the parties held a meeting on 04.08.2016,

Sd/-

Sd/-

pursuant to which Minutes dated 05.08.2016 were prepared recording, inter alia, that the Applicant had made substantial investments in the Kulathupalayam project, the Respondent was facing financial difficulties in executing the project, and therefore sought time till 16.08.2016 to sell the project to a third party, failing which it agreed to settle the Applicant's investment and release the retention amounts relating to the locations already transferred. The Applicant submits that, although the Minutes were not physically signed, they were forwarded to the Respondent on 05.08.2016 for confirmation and were acknowledged by the Respondent through email dated 09.08.2016. It is further submitted that Mr. Arun Prasad, who had received the expenditure details, participated in the meeting and deliberated upon the expenditure after verification. The Applicant further submits that, upon its continuous follow-up, another meeting was held on 22.03.2018 regarding settlement of the pending payments, which was acknowledged by the Respondent through email dated 23.03.2018 requesting supporting details, whereupon the Applicant furnished the requisite documents on 05.04.2018. It is submitted that thereafter, on 02.05.2019, the Respondent forwarded the Applicant's ledger account from its books of accounts.

-SD- Sd/-

vii. The Applicant submits that, upon the Respondent seeking details and clarifications regarding the Power Evacuation (PE) transferred to it, the Applicant furnished the requisite particulars by email dated 14.08.2019. It is further submitted that a meeting was held between the parties on 15.10.2019 at Chennai, pursuant to which the Respondent circulated the Minutes of Meeting on 16.10.2019. Applicant submits that the Minutes recorded that Suzlon officials had verified the Applicant's expenditure of Rs. 1.38 crore incurred towards procurement of eight land locations (the reference to nine locations being stated to be a typographical error), with supporting documents attached. It is submitted that respondent circulated the minutes of the said meeting to the applicant reflecting an agreement to pay a total sum of Rs. 4.62 crore, comprising Rs. 1.92 crore, Rs. 1.32 crore and Rs. 1.38 crore.

viii. The Applicant submits that, despite the aforesaid understanding, no payment was made, compelling it to issue a legal notice dated 14.12.2019 claiming Rs. 17.47 crore, including earlier dues and interest, followed by an email dated 16.12.2019 to the CMD seeking resolution. It is submitted that the Respondent, by reply dated 07.01.2020 to the said notice and email, denied all the claims made by applicant. whereas prior thereto it had continued

-SD-

Sd/-

negotiations, sought documents and never disputed either the invoices or the expenditure claimed. The Applicant further submits that negotiations continued thereafter, and during a meeting held on 23.06.2021, the Respondent initially proposed a one-time settlement of Rs. 7.5 crore within week, which was subsequently reduced to Rs. 5.5 crore on the following day. The Applicant submits that, as no settlement was reached, it addressed an email dated 27.06.2021 recording the discussions held on 24.06.2021, including the Respondent's revised one-time settlement offer of ₹5.5 crore and seeking a further meeting, to which no reply was received. It is further submitted that, on 14.07.2021, Mr. N. Ramani of the Respondent sent voice messages proposing a settlement of Rs. 6.5 crore, comprising Rs. 2 crore in cash and Rs. 4.5 crore through banking channels, which proposal was not accepted.

ix. The Applicant submits that, upon realising that the Respondent was unwilling to discharge its liabilities, it issued a demand notice under Section 8 of the Insolvency and Bankruptcy Code, 2016 on 26.08.2022 claiming Rs. 4.62 crore together with interest. It is submitted that, although the Applicant had earlier issued a legal notice dated 14.12.2019 claiming Rs. 17.47 crore including earlier dues and interest, the claim under the Section 8

-SD-

Sd/-

notice was restricted to the amount reflected in the Minutes of Meeting dated 16.10.2019, aggregating to Rs. 9,70,97,343/- (comprising principal of ₹4.62 crore and interest thereon). The Applicant further submits that an inadvertent typographical error in the Section 8 notice mentioning the date of the Minutes as 06.10.2019 instead of 16.10.2019 did not prejudice the Respondent, since the Minutes themselves were enclosed with the notice. It is submitted that the Respondent, by reply dated 10.09.2022, disputed the claim on the grounds of limitation and alleged pre-existing disputes. The Applicant, however, contends services contemplated under the Development Agreement dated 27.08.2015 were duly rendered and the expenditure claimed was actually incurred at the Respondent's instance. It is contended that the Respondent never disputed the rendering of services, the expenditure incurred, or the contractual relationship until its reply dated 07.01.2020. It is submitted that the continuous correspondence, meetings and negotiations, culminating in the Minutes of Meeting dated 16.10.2019 recording the amount of Rs. 4.62 crore payable, establish the absence of any pre-existing dispute under Section 5(6) of the Code. The Applicant further contends that limitation commenced only from 07.01.2020, when

Sd/-

Sd/-

the Respondent first denied liability, and therefore the present claim is within limitation.

3. Petitioner has relied upon following documents:

a) Memorandum of Understanding between M/s Suzlon Energy Limited and M/s Harri Wind Farms.

b) Details of 15 land points along with registration particulars and No Objection Certificates (NOCs) issued by TANGEDCO.

c) Power Evacuation (PE) Licence for 50 MW issued by TANGEDCO in favour of the Applicant.

d) Development Agreement dated 27.08.2015 between M/s Suzlon Gujarat Wind Park Limited and M/s Harri Wind Farms.

e) TANGEDCO letter cancelling the 50 MW PE Licence.

f) Application submitted by Suzlon Energy Limited to TANGEDCO for 100 MW PE Licence.

g) TANGEDCO demand notice relating to cancellation of the PE Licence.

h) No Objection Letter issued by the Applicant permitting utilisation of its NOCs for grant of PE Licence in favour of SEL.

i) TANGEDCO letter granting 100 MW PE Licence to SEL.

j) Invoices raised by the Applicant along with covering email.

k) Email dated 26.07.2016 enclosing details of land points and expenses incurred.

l) Email correspondence regarding the Minutes of Meeting dated 04.08.2016.

m) Email acknowledging the Minutes of Meeting by the Respondent.

-SD- -SD-

n) Email from the Respondent seeking details of transactions and pending payments.

o) Email correspondence from the Applicant furnishing the requested documents.

p) Ledger account of the Applicant maintained by the Respondent.

q) Email correspondence regarding pending retention amounts and PE invoice payments.

r) Applicant's email providing details of PE invoices and pending amounts.

s) Minutes of Meeting dated 15.10.2019 circulated by the Respondent.

t) Legal Notice dated 14.12.2019 issued by the Applicant.

u) Email addressed to the CMD of the Corporate Debtor demanding payment.

v) Reply dated 07.01.2020 issued by the Corporate Debtor.

w) Email recording the meeting held on 24.06.2021.

x) Transcript of WhatsApp voice messages sent by Mr. N. Ramani.

y) Demand Notice in Form-3 under Section 8 of the Insolvency and Bankruptcy Code, 2016 along with proof of service and Reply to the Section 8 Demand Notice issued by the Respondent.

z) Bank Account Statement of the Applicant.

4. The Respondent/Corporate Debtor filed its reply and submits that claim raised by the petitioner in the present petition is time barred as it is based on three invoices dated 25.07.2016,

Sd/-

-SD-

25.07.2016 and 26.07.2016. It is contended that if there was default of payment based on this invoices, this will make date of default as 25/26.07.2016 whereas petitioner has filed the present petition in the year 2022 and thus debt claimed by petitioner is time barred. It is contended that petitioner has deliberately stated the date of default as 07.01.2020, being the date on which the original respondent (M/s. Suzlon Gujarat Wind Park Limited) replied to petitioner's notice dated 28.11.2019 and 14.12.2019 to bring the petition within the period of limitation.

5. The Respondent submits that no amount is due and payable to the Petitioner under the Development Agreement dated 27.08.2015. It is submitted that under the Agreement, the Petitioner was required to procure and arrange parcels of land free from encumbrances with approach roads, in accordance with the specifications prescribed by the original Respondent, transfer and register the same in favour of the original Respondent, have it registered and hand over possession thereof, arrange Power Evacuation (PE) Connectivity, obtain the requisite Government approvals and No Objection Certificates for 50.4 MW, and bear all costs and expenses relating to acquisition and transfer of land, the entire scope of work being required to be

-SD-

Sd/-

completed within one year as per clause 3 of the agreement. It is further submitted that under Clauses 7.1 and 7.2 of the Agreement, payment towards PE Connectivity was payable only upon the Petitioner procuring and transferring the land and securing Government approvals for transfer of the PE Connectivity to the original Respondent. It is contended that the Petitioner failed to complete the contractual scope of work within the stipulated period, failed to procure and transfer the land as per the agreed specifications, failed to secure the requisite Government approvals and No Objection Certificates or transfer the PE Connectivity in favour of the original Respondent. It is further contended that the PE Connectivity was cancelled by TANGEDCO vide letter dated 08.11.2017 on account of the Petitioner's failure to pay the requisite security deposit, which was within its contractual scope, and therefore the conditions precedent for payment towards PE Connectivity were never fulfilled. It is submitted that no amount was payable under the invoices dated 25.07.2016 for Rs. 1,92,00,000/- and Rs. 1,32,00,000/- raised towards PE Connectivity, and as no default had occurred, no amount had become due and payable. The Respondent further submits that the invoice dated 26.07.2016 for Rs. 1,38,00,000/- towards "investment/expenses" is also not

Sd/-

Sd/-

payable, as such expenditure was contractually required to be borne by the Petitioner, the contractual obligations relating to procurement and transfer of land were never performed, and, in any event, a claim towards "investment/expenses" does not constitute an "operational debt" within the meaning of Section 5(21) of the Insolvency and Bankruptcy Code, 2016, being a claim not arising from the provision of goods or services.

6. The Respondent submits that the present petition is not maintainable in view of the existence of a pre-existing dispute between the parties. It is submitted that the Applicant failed to perform its obligations under the Development Agreement despite repeated requests, whereas the Applicant continued to demand payment without completing the contractual scope of work. The Respondent submits that, in reply to the Applicant's legal notice dated 14.12.2019, it had, by letter dated 07.01.2020, specifically disputed the claims by pointing out the Applicant's failure to complete the agreed work, including procurement of land and obtaining PE Connectivity, and alleged that such defaults had jeopardized the project and caused substantial losses. It is further submitted that, upon receipt of the demand notice under Section 8 of the Code dated 26.08.2022, the Respondent reiterated its objections by issuing a notice of

-SD-

Sd/-

dispute dated 10.09.2022, raising the issues of pre-existing dispute, limitation and non-entitlement of the Applicant's claims under the Development Agreement. The Respondent further relies upon Writ Petition Nos. 27233 of 2019 and 27239 of 2019 filed before the Hon'ble Madras High Court by the original respondent filed on the basis of one land agreement dated 03.07.2017 between the petitioner and original respondent, wherein the High Court passed orders on 16.10.2020, to contend that disputes between the parties had existed much prior to the issuance of the Section 8 demand notice.

7. The Respondent submits that it is a financially sound and solvent company engaged in the business of manufacturing, erection, installation and commissioning of Wind Turbine Generators, having a significant presence in the renewable energy sector and continuing as a going concern. It is submitted that the Respondent's financial statements for the quarter ending FY 2025-26, as disclosed to the National Stock Exchange and published in the Financial Express, demonstrate its financial viability. The Respondent further submits that the Applicant has approached this Tribunal with untenable claims despite having failed to perform its contractual obligations under the Development Agreement. It is alleged that the Applicant

Sd/-

Sd/-

committed breaches of the contractual terms, resulting in substantial losses to the Respondent, and that the observations of the Hon'ble Madras High Court in Writ Petition Nos. 27233 and 27239 of 2019 further substantiate the Applicant's conduct..

8. The Respondent further submits that the email relied upon by the Petitioner did not pertain to any alleged meeting dated 04.08.2016, but merely referred to discussions held on 22.03.2016 at Tirunelveli and sought certain details and documents. The Respondent further denied that Mr. Arun Prasad was present at the alleged meeting dated 04.08.2016 or that any discussion, as alleged by the Petitioner, had taken place. It also denied that any settlement of the pending payments was discussed in the alleged meeting dated 22.03.2018. The Respondent further denied that any meeting was held on 15.10.2019 between the parties, disputed the Minutes of Meeting of even date as being unilateral and signed only by the Petitioner, and denied that its officials had verified the Petitioner's expenditure of Rs. 1.38 Crores towards investment expenses and Rs. 3.24 Crores towards PE Connectivity. The Respondent further denied that any meeting was held on 23.06.2021 at the Chennai office or that its officials had proposed a one-time settlement of Rs. 7.50 Crores within one week. It also denied the contents of

-SD-

-SD-

the email dated 27.06.2021 and specifically denied having admitted liability or agreed to pay Rs. 5.50 Crores towards a one-time settlement. The Respondent further disputed the transcript produced by the Petitioner.

9. The Petitioner by way of rejoinder, submits the present Application is within the period of limitation as the claim arises under the Development Agreement dated 27.08.2015, pursuant to which invoices dated 25.07.2016 and 26.07.2016 were raised. The Applicant relied upon the part payments made by the Respondent till 28.08.2019 and the Minutes of Meeting dated 16.10.2019 to contend that the Respondent had agreed to pay Rs. 4.62 Crores, comprising Rs 1.92 Crores, Rs 1.32 Crores and Rs 1.38 Crores. It was further submitted that the cause of action arose only when the Respondent, for the first time, denied the Applicant's claim vide reply dated 07.01.2020 to the demand notice dated 14.12.2019, and the Applicant also relied upon the exclusion of limitation granted by the Hon'ble Supreme Court from 15.03.2020 to 28.02.2022. The Applicant further submitted that it had duly performed its obligations under the Development Agreement by arranging land for 16 locations, transferring land for 7 locations, issuing the requisite No Objection Certificate in favour of the Respondent, and facilitating 50.4 MW PE

Sd/-

Sd/-

Connectivity, pursuant to which the invoices were raised. It was contended that the Respondent accepted and benefited from the work performed, made payments towards the seven land locations and further made part payments in August 2019, never terminated the Development Agreement alleging non-performance, and raised disputes only after receipt of the demand notice. The Applicant further disputed the Respondent's reliance on the cancellation of PE Connectivity, asserting that the requisite licence, approvals and No Objection Certificate enabled the Respondent's holding company to obtain the PE Connectivity. It was also submitted that the claim of Rs. 1.38 Crores represented expenses incurred in the course of rendering services and constituted an operational debt. The Applicant relied upon the meetings, email correspondence and the Minutes of Meeting dated 05.08.2016 and 16.10.2019 in support of its contention that the Respondent had acknowledged its liability and contended that the plea of pre-existing dispute was raised only in the reply dated 07.01.2020 to avoid its contractual liability.

10. Respondent has relied upon the following judgements:

a) Tirupati Drilling & Mining Services Pvt Ltd vs Sadbhav Engineering Limited - CP (IB) 180 of 2022, NCLT Ahmedabad

Sd/-

-SD-

b) Tirupati Drilling & Mining Services Pvt Ltd vs Sadbhav Engineering Limited - Company Appeal(AT)(Insolvency) 95 of 2025, NCLAT Delhi

c) Tirupati Drilling & Mining Services Pvt Ltd vs Sadbhav Engineering Limited - Diary No 31747 of 2025

d) Mr Sanjeev Jain vs M/s Enternity Infracon Pvt Ltd- CP (IB) 113 (ND)/2017 (NCLT, Delhi)

e) JS Steel Co vs Amod Stampings Pvt Ltd - CP (IB) 250 of 2023, NCLT Ahmedabad

f) JS Steel Co vs Amod Stampings Pvt Ltd - Company Appeal (AT) (Insolvency) No 112 of 2026

11. Both the parties have filed written submissions. Heard the counsels for the petitioner as well as the respondent and perused all the documents and judgements available on record.

12. Observations & Conclusions:

a) There is a MOU which is a partnership for the business proposed to be transacted between the parties signed by way of MOU dated 28.07.2011 and a Development Agreement dated 27.08.2015 from which the stated contract/for generation of electricity for TANGEDCO is arrived. There are certain obligations regarding Land procurement, power evacuation, NOC etc., in which the applicant seems to have not delivered. The Respondent individually took up the matter with TANGEDCO which was subsequently awarded to it

Sd/-

-SD-

(comprising the 50 MW claimed by both parties to Suzlon). Certain documents produced are pertaining to 26.9.2015 after demand notice was issued on 7.9.2015 and the fresh award is given on 11.04.2016 by TANGEDCO to the respondent. The Invoices are raised out of this, which falls out of the stated development agreement and MOU wherein the dispute if any is to be raised before Arbitration.

b) The Invoices were raised on 25.7.2016 which mentions the MOU terms, as per which the payment should have been effected within 15 days. There appears to be certain discussions between the parties, as pointed out by the respondent, the applicant apparently seems to be raising through invoices the sunk cost for the business proposed, but could not be executed. The first legal notice was issued on 14.12.2019 which was replied by the respondent on 7.01.2020. The respondent raised various issues including that the respondent incurred huge losses, the stated lands were not transferred and in fact were lease land and not owned by the applicant and hence proper transfer was not made, the MOU of 2011 and Agreement of 2015 were two different agreements, further they had agreed to pay Rs 23 lakhs in August 2019 only to allow the maintenance staff of

Sd/-

Sd/-

respondent to enter the area. It is also stated that the said project was abandoned due to inability to deliver as per the agreement by the applicant.

c) The main issue here is even if the invoices are to be considered, which are follow out of a development agreement, the legal notices seeks around Rs.17,47,27,686 which includes damages interest and various other loadings, which is not issued in Form 3 Sec 8 of IBC 2016 compliance. The stated issued notice on 14.12.2019 was already barred by limitation. The applicant issued in the Relevant Form to comply with Section 8 of the IBC 2016 only on 26.8.2022, which is a debt already barred by limitation, even if the debt is due to be paid, but this demand notice seeks a repayment of only Rs.4,6,00,000 with interest from 9.8.2016 & 26.09.2016. The dispute raised is a pre existing dispute, added to that the respondent states has made losses and the project was abandoned.

d) There is a dispute on delivery and clearly the demand notice does not comply with the IBC 2016, barred by limitation, the dispute if any is only through the arbitration process, if to decide the matter, and this application is not admissible to pass any order under Sec 9 of IBC 2016,

Sd/-

Sd/-

e) We rely also on the judgment of Honble Supreme Court in Mobilox Innovations P Limtied V Kirusa Software P Limited, the dispute being conveyed prior to issue of demand notice s per provisions of IBC 2016. We also rely on the judgment of Honble NCLAT in Era Infra Engineering Limited v Pride Commercial Projects P Limited prior to the period to be reckoned for the purpose of limitation.

ORDER

CP(IB) No. 318 of 2022 is rejected and disposed of.

-SD-

DR. V.G. VENKATA CHALAPATHY
MEMBER (TECHNICAL)

Sd/-

CHITRA HANKARE
MEMBER (JUDICIAL)