NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH, COURT – II
CHENNAI

ATTENDANCE CUM ORDER SHEET OF THE HEARING OF NATIONAL COMPANY LAW TRIBUNAL, CHENNAI BENCH, HELD ON 07.08.2026 AT 10.30 A.M. THROUGH VIDEO CONFERENCING:

CORAM : SHRI. JYOTI KUMAR TRIPATHI, HON'BLE MEMBER (JUDICIAL)
SHRI. RAVICHANDRAN RAMASAMY, HON'BLE MEMBER (TECHNICAL)

APPLICATION NUMBER	**: --**
PETITION NUMBER	**: CP(IB)/262(CHE)2022**
NAME OF THE PETITIONER	**: Jyoti Limited**
NAME OF THE RESPONDENT(S)	**: Marg Limited**
UNDER SECTION	**: Sec 9 Rule 6 of IBC, 2016**

ORDER

Vide separate order pronounced in open court, **CP/(IBC)/262/CHE/2022** is dismissed.

-SD-	**-SD-**
RAVICHANDRAN RAMASAMY	**JYOTI KUMAR TRIPATHI**
Member (Technical)	**Member (Judicial)**

kg

IN THE NATIONAL COMPANY LAW TRIBUNAL, DIVISION BENCH – II, CHENNAI

CP/IB/262/CHE/2022

(filed under Section 9 of the Insolvency and Bankruptcy Code, 2016 r/w Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016)

In the matter of ***Marg Limited***

JYOTI LIMITED
A company incorporated under Companies Act, 1956
Having its registered office at:
Nanubhai Amin Marg, Industrial Area,
P.O. Chemical Industries,
Vadodara - 390 003,
Represented by Mr. Pearson E. Pereira, Assistant Manager

… Operational Creditor

-Vs-

MARG LIMITED,
a company registered under the provisions of the Companies Act, 1956
Having its registered office at:
Sri Sai Subhodhaya Apartments,
Basement No,57/2B, East Coast Road,
Thiruvanmiyur
Chennai - 600041.

…Corporate Debtor

Order Pronounced on ***7th August 2026***

<u>CORAM</u>
Shri. JYOTI KUMAR TRIPATHI, MEMBER (JUDICIAL)
Shri. RAVICHANDRAN RAMASAMY, MEMBER (TECHNICAL)

For Operational Creditor: S. Arjun Suresh Raghavendra Ross Divakar
Apoorva Vinjamur B. Gautham, Advocates
For Corporate Debtor : B Ramana Kuma, Gajendran Ravi Advocates.

O R D E R

(*Hearing through Hybrid Mode)*

1. Under Adjudication is CP/IB/262/CHE/2022 which has been filed by **JYOTI LIMITED** (hereinafter referred to as **'Operational Creditor'**) under Section 9 of the Insolvency & Bankruptcy Code 2016 (hereinafter, 'IBC, 2016') read with Rule 6 of the Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016 against **MARG LIMITED** (hereinafter referred to as **'Corporate Debtor'**).The prayer made is to admit the Application, to initiate the Corporate Insolvency Resolution Process against the Corporate Debtor, declare moratorium and appoint Interim Resolution Professional (IRP).

2. Part-I of the Application sets out about the Operational Creditor. The Operational Creditor is a Public Listed Company which was incorporated under the Companies Act, 1956 with CIN No: L36990GJ1943PLC000363. Part-II of the Application gives all the particulars of the Corporate Debtor. It is stated that the Corporate Debtor is a Public Listed Company with CIN: L45201TN1994PLC029561 and was incorporated on 16.12.1994 under the

Companies Act, 1956. The Registered Office of the Corporate Debtor as per the Application is stated to be situated at Sri Sai Subhodhaya Apartments, Basement No.57/2B, East Coast Road, Thiruvanmiyur, Chennai - 600041. In Part III of the application, the Operational Creditor has not proposed the name of the "Interim Resolution Professional" and left it to the discretion of in terms of Section 16(3)(a) of IBC, 2016.

3. The Affidavit verifying the petition is placed at Page No – X-XI of the Petition typeset and one Edwin Pereira, Assistant Manager of the Operation Creditor has sworn the Affidavit as the authorized signatory of the Operational Creditor. The Power of Attorney authorizing Mr. B. Saravanan is appended as "Annexure-II (2)" of the Application typeset.

4. In Part-IV of the Application, a total sum of Rs. 22,67,28,267/- (Rupees Twenty-Two Crores Sixty-Seven Lakhs Twenty-Eight Thousand Two Hundred and Sixty-Seven only) including interest is being claimed by the Operational Creditor as the Operational debt. The total amount claimed comprises of principal amount of Rs. 16,21,60,239/- awarded in favour of the Petitioner vide Arbitral Award dated 14.04.2022 and interest amount of Rs. 6,45,68,028/- calculated in terms of the Arbitral Award thereon up to 10.10.2022.

5. Part – V of the Application discloses about the list of the documents which have been filed by the Operational Creditor to prove the 'Operational debt'

6. <u>**PETITIONER'S SUBMISSIONS:**</u>

6.1. It is stated that the Petitioner is a public limited company involved in the business of manufacturing and marketing a wide range of electrical and hydraulic engineering equipment.

6.2. It is stated that Bhavnagar Energy Company Limited ("BECL") awarded a contract to the Corporate Debtor, for design and construction of power plant, for a total lump sum value of Rs. 237,58,22,999/- (Rupees Two Hundred and Thirty-Seven Crores Fifty-Eight Lakhs Twenty-Two Thousand Nine Hundred and Ninety-Nine only). The Corporate Debtor sub-contracted certain works viz., design, procurement, manufacturing, supply, installation, commissioning and performance of the complete electro-mechanical systems, to the Petitioner by Contract dated 15.03.2012 for Rs. 53,52,00,000/-.

6.3. It is stated that the Petitioner received part-payments towards supply of equipment, manpower, erection at site in respect of the invoices raised. However, a sum of Rs. 6,65,35,943 remained unpaid by the Corporate Debtor **(Claim No. 1).** The Corporate Debtor also wrongfully (i) invoked the Performance Bank Guarantee of the Petitioner on 09.07.2018 for Rs.

5,35,20,000/- (Indian Rupees Five Crores Thirty-Five Lakh Twenty Thousand only) **(Claim No. 2)** and (ii) withheld retention amounts of 4,01,04,296/- (Indian Rupees Four Crores One Lakh Four Thousand Two Hundred Ninety-Six only) **(Claim No. 3),** which are due and payable by the Corporate Debtor to the Petitioner.

6.4. Hence, the Petitioner invoked the arbitration clause under the Contract and Hon'ble Justice D. Murugesan, Former Chief Justice of Hon'ble Delhi High Court was appointed as the Sole Arbitrator by the Hon'ble Madras High Court vide its order dated 07.05.2020. Before the Arbitral Tribunal, the Petitioner raised the aforementioned three (3) claims, aggregating to Rs. 16,01,60,241/- along with interest thereon and costs of arbitration. The Corporate Debtor had also raised counter claims to an extent of Rs. 35 Crores. Upon hearing both the parties, the Hon'ble Arbitral Tribunal, by way of the Arbitral Award dated 14.04.2022 ("Arbitral Award"), rejected the counter claims of the Corporate Debtor (Respondent therein) and allowed all the claims of the Petitioner (Claimant therein). The directions issued by the Arbitral Tribunal are extracted hereunder,

> *"1. Directing the Respondent to pay a sum of Rs. 6,65,35,943/- (Rupees Six Crores Sixty-Five Lakh Thirty-five Thousand Nine Hundred and Forty-Three Only) towards the balance outstanding amount due and payable to the Claimant under the invoices with interest thereon at the rate of 9% per*

annum from 16.02.2018 within a period of 90 days from the date of receipt of copy of this Award. In the event of failure the Respondent have to pay interest at the rate of 12% per annum till date of realisation (Claim No, 1);

2. Directing the Respondent to refund the Performance Bank Guarantee amount of Rs. 5,35,20,000/- (Rupees Five Crores Thirty-Five Lakh Twenty Thousand Only) which was wrongfully invoked by the Respondent against the Claimant on 09.07.2018 and consequently encashed, with interest thereon at the rate of 9% per annum from the date of invocation of the Bank Guarantee by the respondent within 90 days of the receipt of copy of this Award, failing which, the respondent is liable to pay interest at the rate of 12% per annum on the unpaid amount till the date of realization (Claim No, 2)

3. Directing the Respondent to refund the entire retention amount of Rs. 4,01,04,296/- (Rupees Four Crores One Lakh Four Thousand Two Hundred and Ninety-Six Only) withheld by it, with interest thereon at the rate of 9% per annum from 28/07/2018 within 90 days of the receipt of the copy of this award, failing which, the respondent is liable to pay interest at the rate of 12% per annum on the unpaid amount till the date of realization (Claim No.3)

4. Directing the Respondent to pay the Claimant a sum of Rs. 20,00,000/- (Rupees twenty lakhs only) towards the costs of the Arbitration".

6.5. As per the Arbitral Award, a total principal sum of Rs. 16,21,60,239/- (Rupees Sixteen Crores Twenty-One Lakh Sixty Thousand Two Hundred and Thirty-Nine Only) was awarded in favour of the Petitioner, with interest thereon as per the terms stipulated thereunder. The Petitioner received the Arbitral Award on 28.04.2022.

6.6. It is stated that the amounts payable under the Arbitral Award constitutes an undisputable debt which is due and payable by the Corporate Debtor. In specific terms, the Arbitral Award is enforceable under the law and is deemed to be a decree. However, the Corporate Debtor neither discharged the debt in terms of the Arbitral Award nor, to its knowledge, challenged the Arbitral Award under the law. Hence, the Applicant issued a Statutory Demand Notice dated 08/09/2022 ('the Statutory Demand Notice") under Form 3, as prescribed by the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016, to the Corporate Debtor demanding payment of the admitted amounts payable, within a period of 10 days from the date of receipt of the aforesaid Notice. The Statutory Demand Notice was received by the Corporate Debtor on 10.09.2022.

6.7. It is stated that the Corporate Debtor, vide Reply Notice dated 19.09.2022, received by the Petitioner on 20.09.2022, reiterated its stand raised earlier before the Hon'ble Arbitral Tribunal and called upon the Petitioner to withdraw the Statutory Demand Notice. The various allegations and averments raised by the Corporate Debtor in its Reply notice were already considered and rejected by the Hon'ble Arbitral Tribunal.

6.8. It is stated that the Corporate Debtor's default, and deliberate omission(s) to make the payment of the Total Outstanding Amount, shows that the Corporate Debtor is unable to pay its debts/ dues and thus is commercially insolvent which is also fortified by the Corporate Debtor's recent financial statements that reflect that the entity is running in losses.

6.9. It is stated that in an earlier proceeding, this Tribunal admitted the initiation of corporate insolvency proceedings against the Corporate Debtor and appointed an IRP, who, after verifying the books of accounts and various other records of the Corporate Debtor, acknowledged the entire principal debt payable to the Petitioner, along with interest as on that date. Although the CIRP subsequently stood closed, the aforesaid acknowledgement of the IRP is binding on the Corporate Debtor and the same is still reflected on its website even as on date.

6.10. The Corporate Debtor defaulted by failing to pay the claimed amount pursuant to the Arbitral Award referred to hereabove.

7. RESPONDENT SUBMISSIONS

7.1. It is stated that the Corporate Debtor was awarded a contract by BECL, Gujarat in respect of sea water intake outfall (SWIO) and circulated water (CW) systems for 2X250 MW lignite based thermal power plant at Padva, Bhavnagar, Gujarat for a total lumpsum value of 237,58,22,999/-. (Rupees Two Hundred and Thirty-Seven Crores Fifty-Eight Lakhs Twenty-

Two Thousand Nine Hundred and Ninety-Nine Only). Therefore, the Operational Creditor and the Corporate Debtor entered into contract dated 15.03.2012, in terms of which, the entire activity relating to the said work including all approvals required for carrying out the same shall be carried out by the Operational Creditor.

7.2. As per the contract agreement, the entire activity relating to the said work including all approvals required for carrying out the same shall be carried by the Petitioner. The contract ought to have been executed by May 2013. However, the Petitioner abandoned the project and the Corporate Debtor incurred loss and damages as a consequence thereof. The Petitioner did not complete all works and supplied substandard of materials. Further, the works done by the Petitioner were not certified by the Respondent and consequently, the contract awarded got terminated by BECL. As a result, the Corporate Debtor lost its goodwill/ reputation and the Corporate Debtor has the right to claim liquidated damages for 1) loss of reputation, 2) execution of pending work, 3) price escalation on materials, manpower etc. The Corporate Debtor has also filed claim for arbitration against BECL.

7.3. The Respondent by letter dated 11.08.2018 has invoked arbitration proceedings as per Clause 20 of the GCC Agreement and appointed one Mr. K. Alakendran as sole arbitrator. The invocation of the Arbitration Clause was disputed by the Operational Creditor by its reply dated 01.09.2018. Further the Petitioner objected that the sole arbitrator can be appointed only on the consent of both parties. The sole arbitrator nominated by the Corporate Debtor also wrote a letter dated 09.11.2018 asking the operational creditor to nominate an arbitrator to expedite the arbitration proceedings. Therefore, if at all any dispute is there, the same need to be referred to Arbitration.

7.4. It is stated that the Petitioner had not acted as per Clause 20 of the GCC Agreement in invoking the arbitration. The Petitioner was admitted into CIRP by this Tribunal in 2018, however, the same was not intimated to the High Court or to the Arbitration tribunal. During the CIRP moratorium, the Petitioner initiated arbitration proceedings on 19.11.2019, filed application under Section 11 of the Arbitration and Conciliation Act, 1996, for appointment of arbitrator, obtained order for appointment of order on 07.05.2020, and filed Statement of Claim in September 2020. When the same was brought up by the Corporate Debtor during the arbitral proceedings in their defence statement, the Petitioners produced the authorization letter from the IRP/RP. The Petitioner was released from CIRP process only on 23.03.2021 and they never disclosed this to the High Court and to the Arbitrator.

7.5. It is stated that a tripartite agreement was executed between the Corporate Debtor, the Operational Creditor and Servomax Ltd., on 25.10.2012 and as per the agreement, all the liabilities to be taken by Servomax Limited in place of Marg Limited. Hence, Marg Limited is not liable. The relevant paragraphs are as under,

> *"And whereas, Marg has been awarded the said tender who has in turn awarded the work to SERVOMAX vide agreement ref. no. Contract Agreement n. MARG/EPC-IP/BECL/2012-23/03 dated 01.09.2012, wherein all the rights, obligations and responsibilities for the said contract are being transferred by MARG to SERVOMAX and now will be governed/executed by SERVOMAX, herein after."*

7.6. It is stated that the Operational Creditor is making claims for invoices raised against 'Servomax' as admitted in the demand notice and Form-5 dated 03.11.2022. Accordingly, the 'Servomax' is not liable for the claims arising out of loss suffered by the Operational Creditor and not the Corporate Debtor.

7.7. It is stated that out of the total amount of Rs.7,59,77,666/- (Rupees Seven Crores Fifty Nine Lakhs Seventy Seven Thousand Six Hundred and Sixty Six Only) payable by the Respondent outstanding towards invoices raised, the part payment made up to 14.10.2016, cheque issued by the Respondent dated 27.12.2016 for a value of Rs. 12,30,896/-(Rupees twelve lakhs thirty thousand eight hundred and ninety six only) towards payments of excess value added tax and unadjusted advance amount of Rs.82,10,827/- (Rupees eighty two lakhs ten thousand eight hundred and twenty seven only) is considered and set off to arrive at the amount of Rs.6,65,35,943/- (Rupees six crores sixty five lakhs thirty five thousand nine hundred and forty three only) unpaid. In this regard, it is stated that the payments made by the Corporate Debtor is not properly accounted by the operational creditor and the figures mentioned is not admitted and liable to be rejected.

7.8. Even as per Petitioner's own admission, lability to pay by Corporate Debtor would arise only when Corporate Debtor receives money from BECL. As the Petitioner abandoned the project, BECL, has cancelled the contract with Corporate Debtor due to which the Corporate Debtor was put to severe financial loss as Corporate Debtor has filed claim for arbitration against BECL.

7.9. The minutes of meeting which the Petitioner relies on relate to 2014 and there has been substantial change in circumstances from the time then. Further the minutes does not provide any admission of the lability.

7.10. It is stated that the Respondent invoked performance bank guarantee on account of failure by the Petitioner to perform obligations under the contract and contrary to the terms of contract. Hence, by following the procedure the aforesaid PBG was invoked finally with difficulties. Further, the Petitioner has also filed a commercial civil suit No.34 of 2018 before the Commercial Division Vadodara in Bhavnagar and has failed to disclose the same to this Tribunal. The Release payment of Rs.5,35,20,000/ (Rupees Five Crores Thirty-Five Lakhs Twenty Thousand Only) against wrongful encashment of performance bank guarantee No.420049 dated 04.11.2011 by the Respondent is denied. Further, the Petitioner is not entitled to interest for 5,35,20,000/- (Rupees Five Crores Thirty-Five Lakhs Twenty Thousand only) @ 18% p.a. from 10.07.2018.

7.11. It is stated that the Respondent is not liable to release the Retention Amount to an extent of Rs.4,01,04,296/-(Rupees four crores one lakh four thousand two hundred and ninety six only) with interest thereon at the rate of 18% per annum is liable to be rejected as contrary to the terms of contract.

7.12. It is stated that with regard to the release payment of Rs. 3,10,96,563/- (Rupees Three Crores Ten Lakhs Ninety-Six Thousand Five Hundred and Sixty Three Only) on account of retention amount lying with M/s. Servomax India limited as per mail dated 04.03.2014, that the amount pertains to dispute between the Petitioner and 'Servomax' has nothing to do with the Respondent. The said Retention Amount covers only after the defective liability period is over as per the contract, in the said case the Petitioner had delayed the work in completion and had abandoned the site and hence, the Respondent had withheld the aforesaid amount as Retention Amount. It is submitted that in addition that a Sum of Rs.90,07,733/-(Rupees ninety lakhs seven thousand seven hundred thirty three only) against the invoices raised under the revised purchased orders issued after 31.01.2014 and in total a sum of Rs.4,01,04,2967- (Rupees four crores one lakh four thousand two hundred and ninety six only) is not admitted and the said claim is barred by imitation and retained by Respondent on account of failure to perform and as the work at project site.

7.13. It is stated that all the invoices raised by the Petitioner are time barred, considering that the last payment was made by Corporate Debtor in 2017, for work orders are pertaining to 2011 & 2012.

7.14. It is stated that the arbitrator has not provided the original award to the Respondent and the balance fee to be paid to the arbitrator may be included in the award but still he is keeping the award with him in lien.

7.15. It is stated that the Corporate Debtor has filed an appeal against the arbitration award on 09.11.2022 vide SR No. Arb O.P(SR)/124727/2022 on the file of the Hon'ble High Court, Chennai and the same is pending before the Hon'ble High Court. Hence, the dispute is pre-existing and pendency of the appeal against award in arbitration proceedings demonstrate the existence of the same.

7.16. It is stated that this case has no legs to stand and deserves to be dismissed in liminie based on the following the decision of the Hon'ble Supreme Court in the case of ***Mobilox Innovations Pvt. Ltd., vs. Kirusa Software Pvt. Ltd AIR 2017 SC 4532) and*** the Hon'ble NCLAT in ***Philips India Limited vs. Goodwill Hospital & Research Centre Ltd. (Company Appeal (AT) (Insolvency) No. 14 of 2017)*** wherein it was held that the when there is a pre-existence of dispute between the Corporate Debtor raises and the Operational Creditor, then a petition under Section 9 of IBC, 2016 may be dismissed. Further, in ***K.Kishan vs M/S Vijay Nirman Company Pvt. Ltd (AIRONLINE 2018 SC 139),*** the Hon'ble Supreme Court of India held that *in so far as Operational Creditors are concerned, is to put the insolvency process against a CD only in clear cases where a real dispute between the parties as to debt owed does not exist.*

7.17. It is stated that the reply dated 19.09.2022 to the form-3 notice clearly narrated there are disputes between the Operational Creditor and the Corporate Debtor.

7.18. It is stated there exists disputes between the parties on the validity of claim, the issue of limitation, whether the claim has been rightfully made by the Petitioner as against the Corporate Debtor, whether the Petitioner failed to perform its part of contract, whether there has been breach of contract, damages suffered by Corporate Debtor and whether the invocation of bank guarantee, the retention of amounts by Corporate Debtor on account of unsatisfactory performance of contract by the Petitioner are all subject matter of disputes between the parties.

8. <u>REJOINDER FILED BY THE PETITIONER</u>

8.1. The Operational Creditor has filed a rejoinder in response to the counter statement filed by the Corporate Debtor vide SR No. 205 dated 12.01.2023.

8.2. It is stated that the Corporate Debtor has merely reiterated the same defences/ averments earlier raised by it before the Hon'ble Arbitral Tribunal which were duly considered and rejected by the Ld. Arbitrator in the Arbitral Award aforementioned. The contention of the Corporate Debtor that the dues are payable by 'Servomax', that the Petitioner has committed a breach of contract and the counter claims raised by the Petitioners were all considered and rejected by the Arbitral Tribunal.

8.3. It is stated that in the instant case, the date of receipt of the Demand Notice i.e., 10.09.2022, and the date of filing the Application before this Tribunal i.e., 03.11.2022, were both prior to the date of filling the petition under Section 34 of the Arbitration and Conciliation Act, 1996 seeking to challenge the Arbitral Award. As such, there was no pre-existing dispute as on the date of initiation of the insolvency proceedings.

8.4. It is stated that the invocation of the arbitration clause by the Corporate Debtor was not in terms of the contract and hence the same was not acceptable to the Petitioner. Be that as it may, the Petitioner had subsequently invoked the arbitration clause under the Contract on 19/11/2019, which culminated in the Hon'ble Madras High Court vide an Order dated 07/05/2020 in O. P. No. 114 of 2020 appointing a Sole Arbitrator [Mr. Justice D. Murugesan, Former Chief Justice of the Delhi High Court) for adjudication of disputes between the parties. After consideration of oral and documentary evidence and hearing both parties, the Hon'ble Arbitral Tribunal passed the aforementioned Arbitral Award in favour of the Petitioner and against the Corporate Debtor herein. As such, the dispute between the parties stands resolved by virtue of the Arbitral Award and the same is enforceable as on date. Thus, there was no pre-existing dispute as on the date of initiating these instant insolvency proceedings against the Corporate Debtor.

8.5. It is stated that the order initiating Corporate Insolvency Resolution Process ("CIRP") against the Petitioner was passed on 12.11.2020 and the same was subsequently closed by 22.03.2021. As such, the Petitioner was not under CIRP as on the date of: (a) invocation of the arbitration clause by it on 19.11.2019, or (b) appointment of the Ld. Arbitrator by the Hon'ble Madras High Court on 07/05/2020 or (c) filing the Statement of Claims before the Hon'ble Arbitral Tribunal on 26/09/2020, as falsely alleged by the Corporate Debtor. Be that as it may, it is pertinent to state that for the period between 12/11/2020 and 22/03/2021, the Applicant received due authorization from the Interim Resolution Professional to proceed with the arbitration before the Ld. Sole Arbitrator. All averments made to the contrary in the paragraphs under reply in this regard are also denied as false and baseless. It is relevant to submit that the contention raised by the Corporate Debtor in this regard has been specifically rejected by the Hon'ble Arbitral Tribunal in the Arbitral Award on the ground that it lacks merit. The averments made by the Respondent is an attempt to re-agitate issues before this Tribunal when there is an enforceable Arbitral Award that has categorically rejected all these contentions as being unsubstantiated and baseless.

8.6. It is stated that the Petitioner is given to understand that the Hon'ble Arbitral Tribunal has refused to deliver the Arbitral Award to the Corporate Debtor and has exercised lien on the same as the Corporate Debtor has failed to pay the Arbitrator's fees. Such right of lien could be exercised by the Ld. Arbitrator under S. 39 of the Arbitration and Conciliation Act, 1996, and thus valid under the law. The Petitioner reliably gathers that, as on the date of the Award, a significant portion of the fee payable by the Corporate Debtor to the Ld. Arbitrator remains unpaid.

8.7. It is stated that the Arbitral Award rejects all contentions/ averments raised by the Corporate Debtor in these paragraphs under reply while allowing the said claims in their entirety. The Hon'ble Arbitral Tribunal further rejected the Corporate Debtor's contention that a portion of the retention amounts were to be paid by Servomax India Limited. The Applicant did not suppress any facts whatsoever before the Hon'ble Arbitral Tribunal, as falsely alleged.

8.8. It is stated that the Corporate Debtor has failed to make out a case of a real and pre-existing dispute in respect of the unpaid operational debt. Hence, the judicial precedents referred to by the Corporate Debtor are highly misplaced and do not support its case. The dispute raised by the Corporate Debtor is merely a moonshine, sham and frivolous one. It is reiterated that all issues raised by the parties stand resolved by the Arbitral Award and the same is valid, binding and enforceable under the law.

FINDINGS OF THIS TRIBUNAL

9. Heard the submissions made by both the parties and perused the pleadings and documents placed on record.

10. To recapitulate the facts of the case, the Corporate Debtor was awarded a contract by Bhavnagar Energy Company Limited (BECL) for design and construction of a power plant, pursuant to which certain works were sub-contracted to the Operational Creditor under Agreement dated 15.03.2012. However, disputes subsequently arose between the parties in relation to the performance of the contract by the Petitioner and unpaid invoices, invocation of the Performance Bank Guarantee and withholding of retention amounts by the Respondent. The Corporate Debtor had invoked arbitration on 11.08.2018, which was disputed by the Operational Creditor. Thereafter, the Operational Creditor invoked arbitration, pursuant to which the Sole Arbitrator was appointed by the Hon'ble Madras High Court. The Corporate Debtor had also raised counter-claims before the Arbitral Tribunal, which came to be rejected. The arbitral proceedings culminated in the Arbitral Award dated 14.04.2022

11. The debt claimed by the Operational Creditor in the present petition arises out of the Arbitral Award dated 14.04.2022. The Corporate Debtor has objected to the petition on the grounds of pre-existing dispute between the parties. Per contra, the Operational Creditor submits that all the issues raised by the Corporate Debtor had already been considered and adjudicated upon by the Arbitral Tribunal and, consequently, there could be no pre-existing dispute after passing of the Arbitral Award. It is further submitted that the

challenge to the Award under Section 34 of the Arbitration and Conciliation Act, 1996 was filed only on 09.11.2022, after issuance of the demand notice on 09.09.2022 and was also beyond the prescribed period of limitation.

12. The issue which arises for consideration is whether there was a "pre-existing dispute" between the parties prior to the issuance of the demand notice under Section 8 of the IBC, 2016.

13. In this regard, it is pertinent to refer to Section 8(2)(a) of the IBC, 2016, which provides that the Corporate Debtor, within a period of ten days of receipt of the demand notice or copy of invoice, shall bring to the notice of the Operational Creditor the existence of a dispute, if any, or the record of the pendency of the suit or arbitration proceedings filed before the receipt of demand notice by the Operational Creditor. Further, Section 5(6) of the Code defines "dispute" in an inclusive manner and provides that a dispute includes a suit or arbitration proceedings relating to the existence or amount of debt, quality of goods or services, or breach of a representation or warranty.

14. The scope and ambit of the expression "dispute" occurring in Sections 5(6) and 8 of the Code came for consideration before the Hon'ble Supreme Court in Mobilox Innovations Private Limited v. Kirusa Software Private Limited, (2018) 1 SCC 353. The Hon'ble Supreme Court, while considering

the legislative intent underlying the expression "dispute", observed as follows:

> *"29. We have also seen the notes on clauses annexed to the Insolvency and Bankruptcy Bill of 2015, in which "the existence of a dispute" alone is mentioned. Even otherwise, the word "and" occurring in Section 8(2)(a) must be read as "or" keeping in mind the legislative intent and the fact that an anomalous situation would arise if it is not read as "or". If read as "and", disputes would only stave off the bankruptcy process if they are already pending in a suit or arbitration proceedings and not otherwise. This would lead to great hardship; in that a dispute may arise a few days before triggering of the insolvency process, in which case, though a dispute may exist, there is no time to approach either an arbitral tribunal or a court. Further, given the fact that long limitation periods are allowed, where disputes may arise and do not reach an arbitral tribunal or a court for upto three years, such persons would be outside the purview of Section 8(2) leading to bankruptcy proceedings commencing against them. Such an anomaly cannot possibly have been intended by the legislature nor has it so been intended. We have also seen that one of the objects of the Code qua operational debts is to ensure that the amount of such debts, which is usually smaller than that of financial debts, does not enable operational creditors to put the corporate debtor into the insolvency resolution process prematurely or initiate the process for extraneous considerations. It is for this reason that it is enough that a dispute exists between the parties."*
>
> *33. . … First and foremost, the definition is an inclusive one, and we have seen that the word "includes" substituted the word "means" which occurred in the first Insolvency and Bankruptcy Bill. Secondly, the present is not a case of a suit or arbitration proceeding filed before receipt of notice – Section*

5(6) only deals with suits or arbitration proceedings which must "relate to" one of the three sub- clauses, either directly or indirectly. We have seen that a "dispute" is said to exist, so long as there is a real dispute as to payment between the parties that would fall within the inclusive definition contained in Section 5(6). "

15. The Hon'ble Supreme Court, while laying down the test to be applied by the Adjudicating Authority, further observed in paragraph 40 of the judgment as follows:

"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. The above paragraphs make it clear that the jurisdiction of the Adjudicating Authority under Section 9 is not to determine the merits or ultimate outcome of the dispute. What is required to be seen is whether there existed a real dispute relating to the debt or default prior to the receipt of the demand notice and whether the defence raised is a plausible contention requiring further investigation, as opposed to a sham, spurious or illusory defence. The expression "dispute" is not confined to a dispute which is

formally pending before a Court or an Arbitral Tribunal on the date of the demand notice.

17. In the present case, the dispute between the parties admittedly has its genesis much prior to the issuance of the demand notice. Admittedly, the Corporate Debtor had, throughout the arbitral proceedings, disputed its liability towards the claims forming the subject matter of the present Application. The Corporate Debtor had, before the Arbitral Tribunal, inter alia, raised the issue relating to the Tripartite Agreement dated 25.10.2012 and the transfer of the rights, obligations and responsibilities relating to the contract to Servomax Limited, apart from disputing the claims towards unpaid invoices, invocation of the Performance Bank Guarantee and retention amounts.

18. The mere fact that the disputes between the parties culminated in an Arbitral Award would not, by itself, obliterate the existence of the dispute for the purposes of Section 8(2)(a) of the Code, particularly where the Award itself continues to be subjected to judicial scrutiny. Even after the Arbitral Award dated 14.04.2022, the Corporate Debtor continued to contest the Award. The Operational Creditor issued the demand notice dated 08.09.2022 and the Corporate Debtor, in its reply dated 19.09.2022, reiterated the disputes and objections which it had consistently raised in relation to its liability.

19. Thereafter, the Corporate Debtor had challenged the Arbitral Award under Section 34 of the Arbitration and Conciliation Act, 1996. Though the appeal was instituted on 09.11.2022, i.e., subsequent to the demand notice on 09.09.2022, the said proceedings were subsequently taken on record by the Hon'ble Madras High Court in Arb.O.P.(Comm.Div.) No.193 of 2023 and were considered on merits and dismissed vide order dated 10.12.2025. The Corporate Debtor has thereafter exercised its statutory right under Section 37(1)(c) of the Arbitration and Conciliation Act, 1996 against the said order and the said proceedings are stated to be pending.

20. In the present case, the dispute clearly predates the demand notice. There had been prolonged contractual disputes between the parties, an earlier invocation of arbitration by the Corporate Debtor, subsequent arbitration proceedings initiated by the Operational Creditor, adjudication of the competing claims before the Arbitral Tribunal, and thereafter judicial proceedings challenging the Award. The subsequent challenge to the Award cannot be viewed in isolation from the dispute which had existed between the parties from the inception of the arbitration proceedings. This is therefore not a case where the Corporate Debtor has raised a sham or moonshine defence for the first time upon receipt of the demand notice.

21. Further, the fact that the Section 34 proceedings were instituted after issuance of the demand notice does not, in the facts of the present case,

render the underlying dispute a subsequent or manufactured dispute. The Corporate Debtor had already placed its objections to its liability on record in the arbitral proceedings and reiterated the same in its reply to the demand notice. The subsequent judicial challenge was a continuation of its contest to the liability embodied in the Arbitral Award.

22. In view of the aforesaid facts and circumstances, we are satisfied that there existed a genuine dispute between the parties relating to the liability forming the subject matter of the present petition, which substantially pre-dated the issuance of the demand notice under Section 8 of the Code. The dispute cannot be characterised as a sham, moonshine, hypothetical or illusory dispute raised merely to evade payment. In view of the ratio laid down by the Hon'ble Supreme Court in ***Mobilox Innovations (supra),*** this Tribunal is precluded from proceeding with the Application under Section 9 of the Code. In view of the same, the present Application filed under Section 9 of the Insolvency and Bankruptcy Code, 2016 is liable to be dismissed on the ground of pre-existing dispute.

23. Accordingly, **CP(IBC)/262(CHE)/2022** is **dismissed**.

-SD-

RAVICHANDRAN RAMASAMY
MEMBER (TECHNICAL)

-SD-

JYOTI KUMAR TRIPATHI
MEMBER (JUDICIAL)