NATIONAL COMPANY LAW TRIBUNAL
INDORE BENCH
COURT NO. 1

ITEM No.201
CP(IB)/56(MP)2025

Order under Section 9 IBC

IN THE MATTER OF:

Oswal Woollen Mills Ltd ....**Applicant**
V/s
Eki Energy Services Ltd ....**Respondent**

Coram:

Hon'ble Shri Brajendra Mani Tripathi, Member (J)
Hon'ble Shri Man Mohan Gupta Member (T)

PRONOUNCEMENT OF ORDER
Delivered on 03/09/2026

The case is fixed for pronouncement of the order.

The order is pronounced in open Court *vide* separate sheet.

Sd/- **Sd/-**

MAN MOHAN GUPTA
MEMBER (TECHNICAL)

BRAJENDRA MANI TRIPATHI
MEMBER (JUDICIAL)

Tomar

IN THE NATIONAL COMPANY LAW TRIBUNAL

INDORE BENCH

COMPANY PETITION IB (IBC)/56(MP)2025

[An Application Under Section 9 of the Insolvency and Bankruptcy Code, 2016 read with Rule 6 of The Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 and the National Company Law Tribunal Rules, 2016]

IN THE MATTER OF:

Oswal Woollen Mills Ltd.

Registered office at Sherpur, G.T. Road, Ludhiana, Punjab

...Operational Creditor / Petitioner

VERSUS

M/s EKI Energy Services Limited

Registered office at Enking Embassy, Plot 48, Scheme 78 Part 2, Vijay Nagar, Indore – 452010, Madhya Pradesh

...Corporate Debtor / Respondent

Order pronounced on: 03.09.2026

CORAM:

Shri Brajendra Mani Tripathi, Hon'ble Member (J)
Shri Man Mohan Gupta, Hon'ble Member (T)

APPEARANCES:

For the Applicant: Ms. Nimisha Gupta, Adv (Online)

For the Respondent: Mr. Nishith Upadhyay. Adv (Online)

O R D E R

1. The present Company Petition being **C.P. (IBC)/56(MP)2025** ("the Petition") has been filed by **Oswal Woollen Mills Ltd**. ("Applicant"/" Operational Creditor"/ "OC") under Section 9 of the Insolvency and Bankruptcy Code, 2016 ("the Code"/"IBC") read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016, seeking initiation of the Corporate Insolvency Resolution Process ("CIRP") against **M/s EKI Energy Services** Limited ("Respondent"/"Corporate Debtor"/"CD").

PLEADINGS OF THE APPLICANT / OPERATIONAL CREDITOR:

2. The Applicant, Oswal Woollen Mills Limited, entered into an **Emission Reduction Purchase Agreement** with the Respondent, **EKI Energy Services Limited**, on **12th April 2022**. The agreement outlined that the Petitioner would supply **Certified Emission Reductions (CERs)** over two compliance periods (CP1 and CP2). Specifically, the Petitioner was to deliver **13,748 Emission Reductions (ERs) for CP1, at a rate of 1.0 USD per CER, and 56,337 ERs for CP2, at a rate of 2.5 USD per CER.**

3. In compliance with the agreement, the Petitioner fulfilled its obligations and delivered the contracted CER's to the Respondent on **13th January 2023**. As per **Clause 1.9** of the agreement, the Respondent was required to make the full payment within **15 days of delivery, i.e., by 28th January 2023**. However, despite the Petitioner fulfilling all its contractual obligations, the Respondent failed to make the required payment by the due date.

4. After 28th January 2023, the Petitioner made several formal demands for payment, including multiple emails sent to the Respondent (copies annexed as **Annexure III**). Despite repeated follow-ups, the Respondent failed to pay the outstanding amount, which led the Petitioner to further escalate the matter.

5. Given the Respondent's continuous non-payment and failure to honour its contractual obligations, the Petitioner was compelled to serve a **demand notice under Section 8 of the Insolvency and Bankruptcy Code (IBC) on 22nd April 2024**. This demand notice formally requested the Respondent to clear the outstanding dues (copy of demand notice annexed as **Annexure I**).

6. The Respondent, on **15th May 2024**, provided a written reply to the demand notice (copy annexed as **Annexure II**). In this reply, the Respondent objected to the Petitioner's claims on allegedly fallacious grounds but did not offer any payment toward the outstanding debt. The Petitioner asserts that the objection raised by the Respondent is frivolous and does not negate the clear payment obligations set forth in the agreement.

7. As of the filing of this petition, the outstanding principal amount owed by the Respondent is calculated to be **INR 1,28,74,296**. This amount includes the principal sum calculated at the prevailing exchange rate of **USD @ ₹83.28** at the time of issuance of the notice, with additional interest accrued at the rate of **24% per annum** till **07.10.2024**, amounting to **INR 56,53,413.23**, as per the agreement, from 28th January 2023 onwards. The total amount in default is thus calculated to be **INR 1,85,27,709**.

8. Despite multiple attempts to resolve the issue amicably, the Respondent's failure to make the payment has led the Petitioner to file the present **Section 9 of the Insolvency and Bankruptcy Code (IBC)** petition to initiate the corporate insolvency resolution process against the Respondent, seeking recovery of the outstanding dues along with accrued interest.

PLEADINGS OF THE RESPONDENT / CORPORATE DEBTOR:

9. The Respondent/ Corporate Debtor had filed the reply raising following grounds objecting to the admission of present application:

GROUND I: EXISTENCE OF PRE-EXISTING DISPUTE - PETITION NOT MAINTAINABLE

9.1 The Corporate Debtor has submitted that the present Petition is not maintainable in view of the existence of a **"real, bona fide, and substantial dispute"** between the parties, which existed much prior to the issuance of the statutory demand notice. It has contended that the dispute is **"pre-existing"**, genuine and supported by contemporaneous documentary material and is not a mere afterthought or sham defence raised to defeat the insolvency process.

9.2 The Corporate Debtor has relied upon the extensive correspondence exchanged between the parties from March 2023 to December 2023 and has stated that disputes existed regarding the **invocation of Clause 2.14(m)** of the ERPA, the **market collapse and its impact on contractual performance, applicable trade rates, fulfilment of conditions precedent for**

payment, quantum of credits actually issued, and invoice requirements under the ERPA.

9.3 It has specifically relied upon its email dated **29.03.2023**, whereby it invoked Clause 2.14(m) and proposed revision of the purchase price on account of the alleged drastic change in market dynamics. The revision proposed was **0.40 USD for CP1 CER's and 1.35 USD for CP 2 CER's.** It has further relied upon the Petitioner's email dated **02.06.2023**, whereby the proposed price revision was rejected and the Petitioner insisted upon the original prices. The Corporate Debtor has also relied upon the Petitioner's email dated **11.12.2023**, wherein reference was made to "legal litigations", and has contended that the said correspondence demonstrates that the matter was contentious, unresolved and liable to require legal adjudication.

9.4 That the demand notice was issued on 22.04.2024, the dispute existed for more than 13 months before the demand notice was even issued. This is not a case where the Respondent raised the dispute as an afterthought upon receiving the demand notice.

9.5 The Corporate Debtor has submitted that the dispute is **"real and not spurious", "plausible", "pre-existing" and "supported by evidence"**, and has relied upon *Mobilox Innovations Pvt. Ltd. v. Kirusa Software Pvt. Ltd.*, (2018) 1 SCC 353, in support of its contention.

9.6 It has further contended that once a real and pre-existing dispute is demonstrated, this Hon'ble Tribunal cannot enter into a detailed examination of the merits of the rival claims at the threshold stage of a Section 9 proceeding. On this basis, it has sought rejection of the Petition at the threshold.

GROUND II: NO CRYSTALLIZED OPERATIONAL DEBT - CONDITIONS PRECEDENT NOT FULFILLED

9.7 The Corporate Debtor has contended that, for invocation of Section 9, there must exist a **"crystallized, due, and payable operational debt"**, whereas a contingent, conditional or disputed claim does not constitute an operational debt for the purposes of the IBC.

9.8 It has characterised the ERPA as a **"composite, contingent, and stage-based commercial arrangement"** and not a simple sale or purchase contract for carbon credits. According to the Corporate Debtor, the ERPA contemplated a sequential process comprising:

(i) Registration and validation;
(ii) Verification and issuance of credits; and
(iii) Trading/sale of the issued credits in international markets.

9.9 The Corporate Debtor has contended that payment was envisaged only after the final stage, namely, successful trading of the credits and receipt of sale proceeds. It has relied upon Clauses **2.1, 1.9 and 2.14(f)** of the ERPA and has contended that "Delivery" was defined as transfer of credits into the Purchaser's registry account for the purpose of trading or other use and was not an unconditional purchase.

9.10 It has further contended that Clause 2.14(f) required the Petitioner **to raise an invoice** detailing the credits and the **"agreed trade rate"** as a condition precedent to payment. According to the Corporate Debtor, the use of the expression "agreed trade rate" demonstrates that the actual trade rate was required to be determined after trading of the credits.

9.11 The Corporate Debtor has therefore contended that, since the credits were not traded and the contemplated monetization did not occur, the payment obligation did not arise and the alleged liability has not crystallized.

GROUND III: NON-ISSUANCE OF INVOICE - DEBT NOT CRYSTALLIZED

9.12 The Corporate Debtor has contended that the alleged debt is further vitiated by non-fulfilment of the mandatory invoicing requirement under Clause 2.14(f) of the ERPA.

9.13 It has submitted that the Petitioner was required to raise an invoice specifying the credits, agreed trade rate and applicable GST, but that **no invoice, e-invoice or GST invoice was raised**. It has further contended that there were no GST returns declaring the alleged transaction, no accounting recognition and no default record.

9.14 The Corporate Debtor has asserted that **"the invoice is the foundational document which creates the liability"** and that, in the absence of an invoice, the alleged liability remained **"inchoate and unenforceable."**

9.15 It has further contended that the absence of invoices, delivery challans, GST records and other basic documentation demonstrates that the alleged liability is not a crystallized operational debt.

GROUND IV: PURCHASE PRICE NOT FINALIZED - INDETERMINATE DEBT

9.16 The Corporate Debtor has contended that the purchase price itself was never finalized between the parties.

9.17 It has relied upon Clause 2.14(m), which, according to its case, permits revision of the purchase price upon occurrence of a **"change in law" or "change in market dynamics."** It has stated that it validly invoked the said contractual mechanism on **29.03.2023** and proposed revised purchase prices of **USD 0.40 per CER for CP1 and USD 1.35 per CER for CP2**.

9.18 The Corporate Debtor has further contended that, under the express language of Clause 2.14(m), failure to respond within seven days would result in the revised purchase price being **"deemed to have been accepted"** and the ERPA automatically standing amended to reflect the revised rates.

9.19 That, even otherwise, the parties have taken diametrically opposite positions on the applicable price. Where the price and quantum payable are themselves indeterminate and contested, no definite operational debt can be said to exist and where the amount payable is uncertain or indeterminate, it cannot be the subject matter of a summary proceeding.

GROUND V: MATERIAL DISCREPANCY IN QUANTUM - INFLATED CLAIM

9.20 The Corporate Debtor has disputed the quantity of CERs forming the basis of the Petitioner's claim.

9.21 It has stated that the Petitioner has based its claim on **70,085 CERs**, whereas the actual number of credits issued, as per the CDM Registry, was **68,544.14 CERs**, resulting in a difference of **1,540.86 CERs**.

9.22 The Corporate Debtor has stated that this discrepancy was specifically pointed out in its reply dated **15.05.2024** to the demand notice, but that the Petitioner failed to provide any reconciliation, explanation or correction.

9.23 It has contended that the discrepancy translates into an alleged inflation of approximately ₹2.81 **lakhs** at the rates relied upon by the Petitioner and that the discrepancy **"seriously undermines**

the credibility of the entire claim" and places the quantum of the alleged debt itself in dispute.

GROUND VI: VALID INVOCATION OF CONTRACTUAL PRICE REVISION MECHANISM

9.24 The Corporate Debtor has contended that Clause 2.14(M) is an **"overriding provision"** permitting revision of the purchase price upon a **"change in law" or "change in market dynamics."**

9.25 It has relied upon the alleged **"unprecedented and unforeseen collapse"** of the global carbon-credit market, including the alleged **80–85% price erosion**, contraction in demand for older vintage CDM credits, withdrawal of institutional buyers, severe illiquidity and regulatory uncertainty arising from the transition from the CDM regime to Paris Agreement mechanisms.

9.26 The Corporate Debtor has contended that these developments constituted a **"change in market dynamics"** within the meaning of Clause 2.14(M).

9.27 That it is a settled principle of contractual interpretation that the foremost duty of the adjudicating authority is to ascertain and give effect to the true intention of the parties as reflected from the terms of the agreement, read as a whole and in its proper commercial context

9.28 That, the inclusion of Clause 2.14(M) reflects the parties' clear intention that the purchase price would not remain fixed in circumstances of fundamental market disruption

9.29 That, it's pertinent to mention that a change in law clause or a change in market conditions clause in a commercial contract is intended to allocate risks between parties in case of unforeseen contingencies.

9.30 It has stated that it invoked the contractual mechanism by its communication dated 29.03.2023, proposed revised rates aligned with prevailing market conditions and offered to discuss alternative solutions. It has further contended that the Petitioner's failure to respond within seven days resulted in deemed acceptance and automatic amendment of the ERPA.

GROUND VII: ABUSE OF IBC PROCESS - BYPASSING CONTRACTUAL REMEDIES

9.31 The Corporate Debtor has contended that the IBC is **"not a substitute for civil recovery"** and is not intended to be used as a tool to coerce payment in disputed commercial transactions.

9.32 It has submitted that the ERPA contains an arbitration clause for resolution of disputes, but that the Petitioner has neither invoked arbitration nor initiated civil proceedings for recovery and has instead invoked the insolvency jurisdiction.

9.33 The Corporate Debtor has therefore contended that the Petitioner has **"deliberately bypassed the agreed dispute resolution mechanism"** and chosen the insolvency route in respect of a disputed contractual claim.

9.34 It has characterised the Petition as an attempt to compel payment of a disputed claim without adjudication of the contractual rights and obligations and has contended that the IBC cannot be used as a **"tool for recovery of the alleged claims in the garb of IBC."**

GROUND VIII: UNSUSTAINABLE INTEREST CLAIM - NO CONTRACTUAL BASIS

9.35 The Corporate Debtor has challenged the Petitioner's claim of **₹56,53,413.23 towards interest at 24% per annum**.

9.36 It has contended that there is **"no provision whatsoever"** in the ERPA for payment of interest on delayed payment and, consequently, the interest claim has no contractual or legal basis.

9.37 It has further contended that the rate of **24% per annum is "wholly disproportionate", "excessive and penal"** and punitive rather than compensatory.

9.38 The Corporate Debtor has also disputed the computation of interest on the basis that the date on which payment became due, fulfilment of the contractual conditions precedent and applicability of the original purchase prices are themselves disputed. It has further contended that the interest period includes the period during which bona fide disputes and negotiations were ongoing.

GROUND IX: DELAY AND LACHES - DELAY IN ISSUANCE OF DEMAND NOTICE

9.39 The Corporate Debtor has contended that, if the Petitioner's case is that payment became due on **28.01.2023**, the demand notice under Section 8 was issued only on **22.04.2024**, after approximately 15 months.

9.40 It has questioned the absence of any explanation for the said delay and has contended that the prolonged period before issuance of the demand notice indicates that the alleged claim was not treated as crystallized or undisputed.

9.41 The Corporate Debtor has further submitted that the parties remained engaged in correspondence and negotiations following invocation of the price revision mechanism and has relied upon the doctrine of **laches**, contending that the belated initiation of proceedings reinforces its case that the insolvency process was invoked as a **"belated coercive measure rather than for genuine insolvency resolution."**

GROUND X: COMPLETE ABSENCE OF BASIC DOCUMENTATION - CLAIM UNSUBSTANTIATED

9.42 The Corporate Debtor has contended that the Petition is vitiated by the **"complete absence of basic and essential documentation"** required to establish an operational debt.

9.43 It has reiterated that there is no invoice, e-invoice or GST invoice, no GST returns declaring the alleged transaction and no basic documentation evidencing the alleged liability.

9.44 It has submitted that, in a typical operational debt scenario, the creditor would produce invoices, proof of supply or service, tax compliance records and books of account evidencing the receivable. According to the Corporate Debtor, the absence of such foundational documents demonstrates that the claim is not a crystallized operational debt but a **"disputed and contingent contractual claim."**

GROUND XI: MALICIOUS INITIATION OF PROCEEDINGS - SECTION 65 OF THE IBC

9.45 The Corporate Debtor has further invoked **Section 65 of the IBC**, contending that the Petition has been initiated with **"malicious intent"** and for purposes other than resolution of insolvency.

9.46 It has contended that the Petitioner has invoked the IBC solely to coerce recovery of a disputed claim, despite the agreed arbitration mechanism and the longstanding disputes concerning price revision, trading of credits and quantum.

9.47 The Corporate Debtor has additionally alleged that **material facts have been suppressed** and that the claim has been **"artificially inflated."**

9.48 On these grounds, it has reserved its right to seek appropriate reliefs under Section 65, including penalties and costs against the Petitioner and the persons responsible for the alleged malicious initiation of the proceedings.

9.49 The Corporate Debtor has ultimately contended that the Petition is liable to be dismissed on account of the cumulative effect of the aforesaid objections, namely, the existence of a **pre-existing, genuine and substantial dispute**, absence of a **crystallized operational debt**, non-fulfilment of the alleged conditions precedent, dispute regarding the **quantum of CERs**, invocation of the contractual **price-revision mechanism**, alleged **abuse of the insolvency process**, absence of a contractual basis for the **interest claim**, alleged **delay and laches**, and absence of **invoices, GST records and other foundational documentation**.

9.50 It has accordingly prayed for dismissal of the Section 9 Petition with costs, a finding that the Petition is vitiated by a pre-existing dispute, and a finding that the Petition constitutes an abuse of the insolvency process.

PLEADINGS OF THE APPLICANT VIA REJOINDER

10. The Applicant/Operational Creditor, in its rejoinder, has specifically, categorically and vehemently denied the averments and objections raised by the Corporate Debtor, and has submitted that the reply is false, frivolous, misleading and an afterthought

intended to evade the contractual obligation to discharge an admitted and crystallised operational debt. It is submitted that the Corporate Debtor has failed to place any contemporaneous material demonstrating the existence of a genuine pre-existing dispute and has instead sought to create a dispute after the payment obligation had already become due.

11. The Applicant has submitted that under the Emission Reduction Purchase Agreement, its obligation stood duly performed upon the issuance and delivery of the Carbon Emission Reduction Certificates, and the corresponding payment obligation of the Corporate Debtor stood crystallised upon such **issuance/delivery and expiry of the stipulated payment period**. It has been contended that the liability was neither conditional nor contingent upon any subsequent trading, sale or monetisation of the CERs. According to the Applicant, the attempt of the Corporate Debtor to characterise the ERPA as a contingent or stage-based arrangement is contrary to the express terms of the Agreement and is merely an attempt to avoid an obligation which had already fallen due.

12. With regard to the plea of a pre-existing dispute, the Applicant has submitted that no real, bona fide or substantial dispute existed between the parties prior to the default or issuance of the statutory demand notice. It has contended that the correspondence relied upon by the Corporate Debtor does not establish a genuine dispute as contemplated under Section 5(6) of the Code, but merely reflects the Corporate Debtor's subsequent attempt to renegotiate the contractual terms on account of market conditions. The Applicant has particularly disputed the contention that its communication

dated 11.12.2023, referring to possible legal recourse, constituted an acknowledgment of any dispute, and has submitted that seeking a probable date of payment and indicating recourse to legal remedies in the event of continued default is a natural consequence of non-payment of an outstanding debt.

13. The Applicant has further submitted that the Corporate Debtor's reliance upon its communication dated 29.03.2023 invoking Clause 2.14(m) of the ERPA is misconceived. According to the Applicant, the said invocation was made only after the CERs had already been issued in January 2023 and after expiry of the contractual period of 15 days for payment. It has been contended that the ERPA was a fixed-price arrangement and that the risk of market fluctuation was consciously assumed by the Corporate Debtor. The Applicant has therefore submitted that a subsequent unilateral attempt to revise the agreed price, after completion of its contractual performance and occurrence of default, cannot retrospectively alter the payment obligation.

14. The Applicant has specifically denied that Clause 2.14(m) permitted retrospective revision of the agreed purchase price or suspension of an obligation which had already become due. It has submitted that no valid "change in law" affecting the issuance, validity or transferability of the CERs has been demonstrated and that mere market downturn, price erosion or commercial unviability cannot, by itself, constitute a legally cognisable event under the ERPA so as to extinguish or defer an accrued payment obligation. The Applicant has also denied the contention that its alleged failure to respond within seven days resulted in deemed

acceptance of the revised price, submitting that the proposal itself was not a legally valid revision under the Agreement.

15. The Applicant has disputed the Corporate Debtor's contention that the correspondence exchanged between the parties establishes an ongoing and substantial dispute. It has submitted that the contractual rights and obligations under the ERPA were clear and that the correspondence relied upon by the Corporate Debtor, instead of demonstrating a bona fide dispute as to liability, merely evidences its inability or unwillingness to honour the fixed contractual price and its attempts to seek alternative arrangements. According to the Applicant, such post-default conduct cannot be converted into a pre-existing dispute merely by giving it the nomenclature of a contractual disagreement.

16. In response to the reliance placed upon *Mobilox Innovations Pvt. Ltd. v. Kirusa Software Pvt. Ltd.*, (2018) 1 SCC 353, the Applicant has submitted that the principles laid down therein do not assist the Corporate Debtor, as the present case does not involve a genuine dispute which preceded the demand notice. It has contended that *Mobilox* protects a Corporate Debtor where a real, plausible and bona fide dispute existed prior to the issuance of the demand notice, whereas the objections in the present case relate to pricing, market conditions, trading and other matters raised after the payment obligation had already crystallised. The Applicant has therefore submitted that the alleged dispute is spurious, hypothetical, illusory and misconceived and cannot defeat the present proceedings under Section 9 of the Code.

17. The Applicant has further denied that the payment obligation under the ERPA was contingent upon successful trading or monetisation of the CERs. It has submitted that although the Agreement contemplated various stages relating to generation, verification and issuance of CERs, its **contractual obligation stood fully discharged upon issuance and delivery of the CERs, which, according to the Applicant, is not disputed**. The subsequent utilisation or trading of the CERs was within the domain of the Corporate Debtor and could not defer or extinguish the Applicant's entitlement to payment. It has relied upon Clause 1.9 of the ERPA to contend that payment was required within the stipulated period and that **"successful trading"** was nowhere prescribed as a condition precedent to such payment.

18. With regard **to Clause 2.14(f)**, the Applicant has submitted that the requirement of raising an invoice was only procedural and did not constitute the event which created the underlying contractual liability. It has contended that the liability arose from the ERPA and completion of the Applicant's contractual performance, and that non-issuance of an invoice cannot render an otherwise accrued contractual debt inchoate or unenforceable. The Applicant has further submitted that the inability to raise an invoice was a consequence of the Corporate Debtor's refusal to honour the agreed contractual price and that the Corporate Debtor cannot take advantage of its own default to contend that no liability had crystallised.

19. The Applicant has accordingly denied that the absence of invoices, e-invoices, GST records, delivery challans or corresponding

accounting entries is fatal to the present Petition. It has submitted that the Petition is supported by the ERPA, the records relating to issuance of CERs and the correspondence exchanged between the parties, which, according to it, sufficiently establish the underlying operational debt and default. It has further contended that an invoice is not the foundational document creating contractual liability, but is only a demand or accounting instrument, and that the absence thereof cannot override the contractual obligation arising from the Agreement.

20. In relation to the alleged non-finalisation of the purchase price, the Applicant has submitted that the **purchase price was expressly fixed and agreed under the ERPA** at the time of its execution. It has denied that the **unilateral proposal** dated 29.03.2023 could render the agreed price indeterminate. According to the Applicant, Clause 2.14(M) did not permit retrospective alteration of the fixed price after the Applicant had completed its performance and the payment obligation had crystallised. The Applicant has therefore contended that the amount payable under the **ERPA was certain, determinable and contractually ascertainable and that the Corporate Debtor cannot create artificial uncertainty by raising a unilateral post-default proposal for revised rates**.

21. As regards the alleged discrepancy in the quantity of CERs, the Applicant has denied that there was any material discrepancy affecting the existence of the operational debt. It has submitted that the **CERs forming the basis of its claim were duly issued by the competent UNFCCC/CDM authorities** and that any alleged **marginal variation** in quantity does not negate the

Corporate Debtor's liability to pay for the CERs actually issued and delivered. It has further contended that the alleged discrepancy was not raised as a bona fide dispute during the contemporaneous correspondence between the parties and was sought to be relied upon subsequently to challenge an otherwise existing liability.

22. The Applicant has further submitted that, even assuming without admitting that there was some numerical or arithmetical variation, such variation would not render the entire operational debt non-existent or indefinite. It has contended that the alleged discrepancy is peripheral and does not go to the root of the liability, particularly when the issuance of CERs and the underlying contractual obligation to pay are stated to be admitted. The Applicant has therefore submitted that such alleged discrepancy cannot, at the threshold, defeat the maintainability of the Petition under Section 9 of the Code.

23. The Applicant has denied that invocation of the **arbitration clause** contained in the ERPA was a prerequisite to filing the present Petition. It has submitted that the existence of an arbitration clause does not bar proceedings under Section 9 where an operational debt and default are established and there is no genuine pre-existing dispute. The Petitioner has not invoked the insolvency jurisdiction as a substitute for adjudication, but for resolution of a clear and crystallised operational debt, and the Respondent's reliance on the arbitration clause is irrelevant in the absence of any bona fide pre-existing dispute.

24. The Applicant has also denied the allegation that the **Petition constitutes an abuse of the insolvency process or that it was**

filed as a coercive measure. It has submitted that the present proceedings were instituted only after completion of its contractual obligations, issuance and delivery of the CERs and continued non-payment by the Corporate Debtor. According to the Applicant, where a debt is due and payable and remains unpaid in the absence of any bona fide pre-existing dispute, invocation of Section 9 is consistent with the object of the Code and cannot be characterised as coercive merely because the Corporate Debtor has failed to discharge its contractual liability.

25. With respect to the **claim for interest**, the Applicant has denied that the claim is without contractual or legal basis and has disputed the Corporate Debtor's contention that the interest component renders the Petition non-maintainable. It has submitted that the **interest claimed is consequential to the prolonged non-payment** and that, in any event, a dispute confined to the computation or quantum of interest cannot extinguish or render non-maintainable the principal operational debt. It has further submitted that the computation has been made from the date on which the payment became contractually due upon issuance/delivery of the CERs and expiry of the stipulated payment period.

26. The Applicant has denied the plea of delay and laches on the ground of the time gap between the alleged due date and issuance of the demand notice. It has submitted that the Petition has been filed within the prescribed period of limitation and that it had consistently pursued payment through repeated communications and follow-ups. According to the Applicant, the delay, if any,

cannot be treated as acquiescence to the alleged disputes or as evidence that the debt was not crystallised, particularly when the Corporate Debtor continued to remain in default.

27. The Applicant has specifically denied **the allegations under Section 65 of the Code.** It has submitted that Section 65 is an exceptional provision and that the burden to establish fraudulent or malicious initiation lies upon the party alleging the same. According to the Applicant, bald allegations of coercion, suppression or misuse, unsupported by cogent material, are insufficient to invoke Section 65. It has reiterated that the Petition was instituted after completion of its contractual obligations, issuance and delivery of the CERs, repeated demands for payment and continued default by the Corporate Debtor, and therefore cannot be characterised as having been initiated with malicious intent or for any purpose other than the resolution contemplated under the Code.

28. The Applicant has further denied having suppressed any material fact or artificially inflated its claim and has submitted that the relevant contractual documents, issuance records and correspondence have been placed on record. It has also contended that the mere existence of an arbitration clause or the non-invocation thereof cannot, by itself, establish mala fides. The Applicant has therefore submitted that the allegations under Section 65 are wholly misconceived and liable to be rejected.

29. On the basis of the aforesaid submissions, the Applicant has contended that the Corporate Debtor has failed to establish any real, bona fide and pre-existing dispute; that the operational debt

had already crystallised upon issuance and delivery of the CERs and expiry of the contractual payment period; that the subsequent objections regarding price revision, trading, invoicing, quantity, market conditions and interest are either contrary to the ERPA or relate to post-default assertions; and that the Petition is not an abuse of the insolvency process. The Applicant has accordingly sought rejection of the reply filed by the Corporate Debtor and admission of the Petition under Section 9 of the Code, with costs and such other relief as may be deemed fit in the interest of justice.

ANALYSIS AND FINDINGS

30. We have considered the pleadings of the parties, the documents placed on record and the rival submissions. The present proceedings arise from the contractual relationship between the parties under the Emission Reduction Purchase Agreement dated 12.04.2022 ("ERPA").

31. The Applicant claims that its entitlement to payment arose upon delivery of the CERs on 13.01.2023 and expiry of the stipulated period of 15 days, whereas the Corporate Debtor disputes the basis, rate, mechanism and quantum of the amount claimed. The matter, therefore, requires examination within the limited scope of Sections 8 and 9 of the Code.

32. The statutory scheme under Sections 8 and 9 of the Code is well settled. Section 8(2)(a) requires the Corporate Debtor, upon receipt of the demand notice, to bring to the notice of the Operational Creditor the existence of a dispute, if any, or the record of pendency of a suit or arbitration proceeding relating to such

dispute. Section 9(5)(ii)(d), correspondingly, requires rejection of the application where notice of dispute has been received by the Operational Creditor or there is a record of dispute in the information utility. The expression "dispute" under Section 5(6) includes, inter alia, a dispute relating to the existence or amount of the debt, the quality of goods or services, or the breach of a representation or warranty.

33. The governing test was authoritatively laid down by the Hon'ble Supreme Court in ***Mobilox Innovations Pvt. Ltd. v. Kirusa Software Pvt. Ltd., (2018) 1 SCC 353***. At the stage of a Section 9 proceeding, the Adjudicating Authority is not required to determine the ultimate merits of the rival contractual claims. The enquiry is whether the defence raises a plausible contention requiring further investigation and whether the dispute is real and not spurious, hypothetical or illusory. Where such a dispute truly exists in fact, the application under Section 9 cannot be admitted.

34. The present case has to be examined against this statutory and judicial standard. The Operational Creditor's claim proceeds on the basis of Clause 1.9 of the ERPA, under which it contends that its payment entitlement crystallised upon delivery of the CERs on 13.01.2023 and became due upon expiry of the stipulated period of 15 days.

35. The Corporate Debtor has disputed the contractual rate itself, invoked a specific contractual provision for revision of that rate, questioned the payment mechanism and also raised a discrepancy concerning the quantity of CERs. The Corporate Debtor, however, does not merely deny the liability. It disputes the Applicant's

construction of the contractual payment mechanism and relies, inter alia, upon Clause 2.14(f), contending that the contractual arrangement contemplated invoicing at the agreed trade rate and other steps before the payment obligation could be treated in the manner asserted by the Operational Creditor.

36. Thus, the controversy is not merely one of non-payment of an otherwise undisputed amount. The parties are at variance as to what amount was contractually payable, at what rate, and upon satisfaction of which contractual conditions the amount became due and payable. Whether Clause 1.9, read with Clause 2.14(f), had the effect asserted by the Operational Creditor, or whether the payment mechanism operated in the manner contended by the Corporate Debtor, involves interpretation of the ERPA. This Tribunal, while exercising summary jurisdiction under Section 9, cannot undertake a final adjudication of such contractual questions.

37. More importantly, the record demonstrates that this controversy was not raised for the first time in response to the statutory demand notice. The Corporate Debtor, by its communication dated 29.03.2023, specifically invoked Clause 2.14(m) of the ERPA and proposed revision of the purchase price on the ground of the alleged change in market dynamics affecting the carbon-credit market. The said clause 2.14(m) is as follows:

> m. *Notwithstanding anything contained in this Agreement to the contrary, in the event of any change in law following the Execution Date (which for avoidance of doubt shall include any international policies, treaties or agreements pertaining to*

climate change or any change in market dynamics, the Purchaser shall notify the Seller in writing with its proposal on any revision to the Purchase Price, which should be concluded within 7 days of intimation. In case there is no response from the Project Owner within 7 days of communication, then revised Purchase Price shall be deemed to have been accepted and this agreement shall automatically stand amended to reflect such revised Purchase Price.

38. The Operational Creditor, by its communication dated 02.06.2023, rejected the proposed revision and maintained its claim on the basis of the originally agreed rates. The correspondence between the parties thereafter continued, and the Operational Creditor's own communication dated 11.12.2023 referred to the possibility of "legal litigations" in the event of non-payment.

39. The significance of the aforesaid correspondence is material. It demonstrates that, much before the statutory demand notice, the parties had already taken opposing positions concerning the contractual price and the consequences of the circumstances relied upon by the Corporate Debtor under Clause 2.14(m). The disagreement between the parties was, therefore, already subsisting prior to the issuance of the statutory demand notice.

40. The submission of the Operational Creditor that a dispute raised after the alleged date of default cannot constitute a "pre-existing dispute" is not acceptable. The relevant enquiry is whether a genuine dispute existed prior to the receipt of the demand notice under Section 8. The Hon'ble Supreme Court, in ***Srinivasa Reddy Velagala v. Sravanthi Infratech Pvt. Ltd.*****, Civil Appeal No. 876**

of 2021, decided on 12.08.2026, while considering the requirement of a pre-existing dispute under Sections 8 and 9 of the Code, has reiterated that it is not necessary that such dispute should have already progressed to the stage of a civil suit or arbitration. The existence of such dispute may be demonstrated from the conduct of the parties and the communications exchanged between them.

41. The factual distinction between ***Srinivasa Reddy*** and the present case is material. The finding in that case was reached upon consideration of the particular conduct of the parties and the material available on record. In the present case, conversely, the Corporate Debtor did not remain silent. It invoked a specific contractual provision, proposed revised rates and maintained its position through contemporaneous correspondence well before the issuance of the demand notice. The present record, therefore, contains contemporaneous material evidencing the existence of an actual contractual disagreement prior to the statutory notice.

42. The defence raised by the Corporate Debtor cannot, therefore, be characterised as a bare denial or a moonshine defence. It is founded upon Clause 2.14(m) of the very ERPA on which the Operational Creditor's claim is based, and is supported by contemporaneous correspondence in which the Corporate Debtor specifically proposed revised rates of **USD 0.40 per CER for CP1 and USD 1.35 per CER for CP2**. Whether the Corporate Debtor was ultimately entitled to invoke the said clause and whether the circumstances pleaded by it fell within the scope of the clause are matters which we are not required to finally determine at this

stage. The relevant question is whether the contention is genuine and requires adjudication. On the material before us, it is.

43. The fact that the Operational Creditor disputes the applicability of Clause 2.14(m) does not convert the Corporate Debtor's contention into a sham defence. The Applicant submits that the contractual price was fixed and could not be retrospectively revised after issuance and delivery of the CERs and that failure to make payment on the due date is an afterthought. The Corporate Debtor takes a contrary position and relies upon the contractual mechanism to contend otherwise. The rival positions thus arise directly from the interpretation of the ERPA itself. Determining which interpretation is legally correct would require this Tribunal to undertake a substantive adjudication of the contractual rights of the parties, which is beyond the limited enquiry contemplated in a Section 9 proceeding.

44. The Corporate Debtor has also **disputed the quantity** of CERs forming the basis of the claim, pointing out a difference between the 70,085 CERs relied upon by the Operational Creditor and the 68,544.14 CERs stated to have been issued according to the registry records, resulting in a difference of 1,540.86 CERs. We do not treat this numerical discrepancy, by itself, as determinative of the present proceedings. Its significance lies in the fact that it forms part of the broader unresolved controversy concerning the quantity and corresponding consideration payable under the ERPA.

45. The objection concerning **non-issuance of invoice** also has to be considered in the context of the contractual positions taken by the

parties. The Corporate Debtor relies upon Clause 2.14(f) to contend that the Applicant was required to raise an invoice setting out the CERs, the applicable GST and the “agreed trade rate” before payment could be processed. The Applicant, on the other hand, disputes the effect attributed to this requirement and submits that the invoice was to be raised on the contractual price, which it continued to assert even after the alleged default. According to the Applicant, the inability to raise such invoice arose because the Corporate Debtor had disputed the agreed contractual price and proposed a different rate after the alleged default.

46. The aforesaid rival positions concerning the invoice cannot be considered in isolation from the underlying dispute as to the applicable contractual rate. The issue is not merely whether an invoice was or was not issued, but what price was to be reflected in the invoice and whether, in the circumstances pleaded by the parties, the Applicant's entitlement to payment could be treated as crystallised at the rate asserted by it. The Applicant contends that the invoice was to be raised at the contractual price and that the Corporate Debtor, having disputed that price after the alleged default, cannot rely upon the non-issuance of the invoice to defeat the Applicant's claim. The Corporate Debtor, on the other hand, relies upon Clause 2.14(f) as part of the contractual payment mechanism. These rival contentions form part of the same underlying contractual controversy and reinforce the existence of a dispute which had already arisen between the parties prior to the statutory demand notice.

47. The subsequent correspondence also assumes significance, not for determining the merits of the contractual claim, but for appreciating the nature of the dispute between the parties. The Applicant continued to demand payment at the original contractual rates, while the Corporate Debtor continued to dispute the applicable rates and relied upon the contractual mechanism invoked by it. **The fact that each party consistently maintained its own position does not make the dispute illusory; rather, it demonstrates that the disagreement remained unresolved and was carried forward into the period preceding the statutory demand notice. In light of all there is a pre-existing dispute between the parties in terms of contractual obligations.**

48. Further, the existence of an arbitration clause does not, by itself, bar recourse to Section 9 of the Code. The present application is not being rejected merely because an alternative contractual remedy is available. The rejection follows from the independent finding that a genuine and pre-existing dispute existed between the parties prior to the issuance of the demand notice.

49. As regards the claim towards interest at 24% per annum, we do not consider it necessary to adjudicate upon the same for determining the present proceedings. The Applicant has claimed principal of ₹1,28,74,296/- and interest of ₹56,53,413.23/-. Even excluding the interest component, the principal amount asserted by the Applicant is above the statutory threshold prescribed under Section 4 of the Code. The question whether the claimed interest is contractually recoverable, particularly in the absence of an

express interest clause relied upon by the Applicant, is therefore left open.

50. The time gap between the alleged default dated 28.01.2023 and issuance of the demand notice dated 22.04.2024 does not, by itself, furnish a ground for rejection of the present Petition. The significance of the intervening period, for present purposes, lies in the correspondence exchanged between the parties during that period. Such correspondence demonstrates that the contractual disagreement concerning the applicable price and payment remained alive prior to the issuance of the statutory demand notice. We therefore do not consider it necessary to enter into any further adjudication on limitation, as the present Petition is being rejected on the distinct ground of a pre-existing dispute.

51. On an overall consideration of the record, we find that this is not a case where the Corporate Debtor has raised a bald denial or an unsupported defence only after receipt of the statutory demand notice. The contemporaneous correspondence demonstrates that, prior to the demand notice, the parties were already in substantive disagreement concerning the contractual price, the effect of Clause 2.14(m), the payment mechanism contemplated under the ERPA and, additionally, the quantity forming the basis of the claim.

52. We are conscious that the Applicant may ultimately succeed in establishing before the appropriate forum that Clause 2.14(m) was not validly invoked, that the original contractual rates alone were payable, that delivery of the CERs itself triggered the payment obligation and that the entire amount claimed is recoverable. Equally, the Corporate Debtor may ultimately fail to establish the

contractual defence presently advanced by it. Those are matters on which we express no opinion. The limited question before us is whether the defence raised by the Corporate Debtor is genuine and requires adjudication beyond the summary insolvency process. On the material before us, we find that it is.

53. For the reasons recorded hereinabove, we hold that a **real, plausible and pre-existing dispute** existed between the parties prior to the issuance of the demand notice dated 22.04.2024, within the meaning of Section 5(6) read with Section 8(2)(a) of the Insolvency and Bankruptcy Code, 2016. Consequently, the statutory bar contained in Section 9(5)(ii)(d) of the Code is attracted.

54. It is clarified that the aforesaid finding is confined to the maintainability of the insolvency proceedings under Section 9 of the Code. We have not adjudicated upon the validity of the invocation of Clause 2.14(m), the applicable contractual rate, the precise quantity of CERs for which consideration may be payable, the effect of the invoicing provisions, the payment mechanism under the ERPA, or the Applicant's entitlement to interest. All such questions are left open to be determined by the forum otherwise competent in accordance with law.

55. Further, it is also well settled that the Insolvency and Bankruptcy Code, 2016 is not intended to be a substitute for a recovery forum or a mechanism for adjudication of disputed contractual claims. The object of proceedings under Section 9 is to trigger the insolvency resolution process upon fulfilment of the statutory

requirements and not to determine or enforce contractual rights which are otherwise disputed between the parties.

56. In the present case, the ERPA itself provides for a contractual mechanism for resolution of disputes between the parties. It is, therefore, open to the Applicant to avail such remedy as may be available to it under the contractual arrangement or otherwise in accordance with law.

57. Accordingly, **C.P. (IB) No. 56/2025 is liable to be dismissed.** The rejection is on account of the existence of a genuine pre-existing dispute and shall not be construed as an adjudication upon the merits of the rival contractual claims of the parties.

58. The rejection of the present application shall not preclude the Operational Creditor from pursuing such remedy as may otherwise be available to it in accordance with law in respect of its contractual claim.

59. There shall be **no order as to costs**.

60. **Company Petition IB (IBC)/56(MP)2025** stands **dismissed and disposed of**. All pending interlocutory applications, if any, stand disposed of accordingly.

Sd/- **Sd/-**

MAN MOHAN GUPTA
(MEMBER TECHNICAL)

BRAJENDRA MANI TRIPATHI
(MEMBER JUDICIAL)

Chandni- L.R.A