

NATIONAL COMPANY LAW APPELLATE TRIBUNAL

PRINCIPAL BENCH, NEW DELHI

Company Appeal (AT) (Insolvency) No. 553 of 2025

(Arising out of order dated 30.01.2025 passed by the National Company Law Tribunal, Cuttack Bench, in Company Petition (IB) No. 36/(CB)/2024).

In the matter of:

Anuj Rana

S/o Late Rana Brijendra Swaroop Singh,
aged 57 years,
R/o: Rana Bhawan, House No.3,
Indira Market Road, Near DAV School,
Balco Nagar, Korba,
Chhattisgarh PIN- 495- 678.

...Appellant

Vs.

1. Virendra Praksh Gupta

Proprietor of M/s Virendra Textiles,
M/s Virendera Textiles. B-51,
Sector-10, NOIDA, District: Goutam Buddha Nagar,
Uttar Pradesh PIN- 201301

**2. Ashutosh Khemani,
Resolution Professional**

Neelkantham Systems Private Limited,
B-15, Deendayal Complex, Power House Road,
Korba, Tahsil & District: Korba,
Chhattisgarh. PIN-495677

...Respondents

Present:

For Appellant: **Mr. Raj Kamal Singh, Mr. Praveen Chaturvedi, Ms. Jyoti Chaturvedi, Mr. Tarun Kumar and Mr. Abhinav Kumar, Advocates.**

For Respondents: **Mr. Alok Kumar Kuchhal, Advocate for R1.**

Mr. Chitranshul A. Sinha, Mr. Saswat Acharya, Mr. Shivam Shorewala, Ms. Rakshita Bhargava, Ms. Esha Sharma, Advocates for RP.

J U D G M E N T
(15th October, 2026)

Indevar Pandey, Member (T)

The present appeal has been preferred by **Anuj Rana**, who is the majority shareholder and ex-Director of Neelkantham Systems Private Limited (**Corporate Debtor**), under Section 61 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as '**Code**'), assailing the order dated **30.01.2025** passed by the National Company Law Tribunal, Cuttack Bench (Adjudicating Authority) in **CP (IB) No. 36/CB/2024**. The impugned order was passed in an Application under Sec 9 of the Code filed by **Mr. Virendra Prakash Gupta (Respondent No.1)**, and Proprietor of M/s Virendra Textiles (Operational Creditor), whereby the Respondent's application seeking initiation of Corporate Insolvency Resolution Process against the Appellant was admitted. **Shri Ashutosh Khemani, the Resolution Professional** is the **Respondent No.2** in this appeal.

2. The proceedings arise out of transactions concerning the supply of Virgin HDPE Pond Liner, Non-Woven Geotextile Polyester Fabric and Geo Cell by the Respondent to the Appellant for execution of works awarded by NTPC Limited in connection with the Eco Park at NTPC Plant at Badarpur, New Delhi.

3. Brief Facts of the relevant for deciding the matter are given below:

- i. The Corporate Debtor/ Neelkantham Systems Private Limited, was executing work awarded by NTPC Limited in relation to Horticulture, Landscaping, Civil Works, Art & Sculptural Installations and other

facilities in Phase-II of the Eco Park at NTPC Badarpur, New Delhi. The project required, inter alia, laying of 2.00 mm thick plane black Virgin HDPE Pond Liner in 3.00 metre width, 150 GSM Non-Woven Geotextile Polyester Fabric having tensile strength of 8 KN/M, and Geo Cell having weld distance of 712 mm and depth of 75 mm at the bottom base of the pond being constructed at the Eco Park.

ii. In connection with the aforesaid work, Corporate Debtor placed Purchase Order No. A07P14 dated 09.05.2022 upon M/s Virendera Textiles/Respondent No.1 for supply of 4,50,000 square metres of 150 GSM Non-Woven Geotextile Polyester Fabric having tensile strength of 8 KN/M (SKU-NEEIC549) and 40,000 square metres of Geo Cell having weld distance of 712 mm and depth of 75 mm (SKU-NEEIC550).

iii. Subsequently, pursuant to Purchase Order No. A07P28 dated 01.11.2022, M/s Virendera Textiles was to supply 1,75,000 kilograms of Virgin HDPE Pond Liner, 2.00 mm thick, plane and black, in 3.00 metre width (SKU-NEEIC1312). The purchase orders were accompanied by the relevant portions of NTPC's Purchase Order No. 4600068970 containing the specifications applicable to the material.

iv. The purchase-order documentation prescribed requirements relating to the quality of the material, furnishing of Manufacturer Test Certificates (MTCs) with the bills/invoices and mention of the relevant SKU/ASTM codes in the bills/invoices. The subsequent

invoices raised pursuant to the purchase orders formed the basis of the financial transactions between the parties.

v. The Respondent No.1 raised invoices from 06.07.2022 to 27.11.2023 in respect of the supplies made pursuant to the purchase orders. The ledger account placed before the Adjudicating Authority recorded payments aggregating to Rs.2,07,14,776/-, with Rs.1,46,58,247/- shown as the unpaid principal amount. The record further showed that no payment was made between 28.11.2023 and 15.04.2024.

vi. In the course of the transactions, test reports concerning the supplied Virgin HDPE Pond Liner were generated by Eurofins Spectro. Test Report No. D230114033/D230114033-10 dated 23.01.2023 recorded the thickness of the HDPE Pond Liner as 1.51 mm, while the purchase order specified a thickness of 2.00 mm. Another Test Report No. A1D230214024/D230214024-10 dated 23.02.2023, recorded the tear strength of the material as 153.8, against the figure of 314 referred to in the purchase-order specifications.

vii. The financial account between the parties remained unsettled, and the Respondent No.1 thereafter issued a demand notice under Section 8 of the Code. The appeal's List of Dates records the notice under Section 8 as dated 14.02.2024, with receipt on 27.02.2024, while the order of the NCLT records demand notices in Form 3 and Form 4 dated 21.02.2024 and 27.02.2024, respectively. The

Appellant responded to the Section 8 demand notice by communication dated 06.03.2024.

viii. The Respondent No.1 thereafter instituted CP (IB) No. 36/CB/2024 before the Adjudicating Authority under Section 9 of the IBC, seeking initiation of CIRP against Corporate Debtor. The NCLT's order records the date of filing as 06.05.2024, the principal outstanding amount as Rs.1,46,58,247/-, interest as Rs.9,68,199/-, total claimed debt as Rs.1,56,26,446/-, and the date of default stated in the application as 12.02.2024.

ix. While considering the Section 9 application, the NCLT took note of the invoices raised between 06.07.2022 and 27.11.2023, the payments of Rs.2,07,14,776/-, the outstanding principal of Rs.1,46,58,247/-, and the interest component of Rs.9,68,199/-. The Adjudicating Authority also considered the purchase-order terms relating to specifications and the requirement of mentioning SKU/ASTM codes in the invoices.

x. The Adjudicating Authority also considered the test reports placed on record concerning the HDPE Pond Liner, including the report dated 23.01.2023 recording thickness of 1.51 mm against the specified 2.00 mm, and the report dated 23.02.2023 recording tear strength of 153.8 against the specified figure of 314. The order further considered communications exchanged with NTPC concerning the testing material and the measurements reflected in the reports.

xi. The Adjudicating Authority passed the impugned order dated 30.01.2025 in CP (IB) No. 36/CB/2024 and admitted the Section 9 application filed by Mr. Virendra Prakash Gupta, Proprietor of M/s Virendra Textiles and initiated the CIRP proceedings against the Corporate Debtor.

Submissions of Appellant

4. Ld. Counsel submitted that the principal dispute concerns the quality, specification, quantity and contractual compliance of HDPE liner sheets supplied by Respondent No.1 for the NTPC Eco Park Project, Badarpur, Delhi, and that the contemporaneous correspondence, test reports, photographs and communications with NTPC demonstrate the existence of a genuine and pre-existing dispute.

5. He submitted that the Respondents, instead of addressing the appeal on merits, have raised a technical objection to its maintainability by relying upon the judgment dated 10.04.2026 of the Hon'ble Supreme Court in ***Nitendra Kumar Tomer, Suspended Director, Ambro Asia Pvt. Ltd. v. Unox S.P.A. & Anr., Civil Appeal No.3607 of 2026***, and the judgment dated 16.04.2026 of this Tribunal in ***Dhanlaxmi Electricals Private Limited v. HDFC Bank & Anr., Company Appeal (AT) (Ins.) No.1530 of 2025***. The objection arises from the fact that the appeal was initially filed in the name of the Corporate Debtor through its Director Anuj Rana, who is also its majority shareholder and personal guarantor, and thereafter Anuj Rana filed I.A. No.2408 of 2025 dated 10.04.2025 seeking substitution of his name as Appellant. The said application was allowed by this Tribunal on 22.04.2025

despite the objection of Respondent No.1, and the order was never challenged by the Respondents.

6. Ld. Counsel contended that the Respondents are now attempting to reopen the order dated 22.04.2025 at the final stage by relying upon subsequent judgments. It was submitted that *Dhanlaxmi Electricals*, being a decision of a two-Member Bench, is not binding upon the present three-Member Bench and was also rendered in materially different circumstances, including subsequent developments which rendered that appeal infructuous. The present appeal, therefore, cannot be dismissed on the basis of the said decisions without examining the circumstances in which the amendment was allowed and the substantive merits of the appeal.

7. Ld. Counsel submits that the objection is misconceived since the order dated 22.04.2025 allowing amendment of the cause title was a judicial order passed after considering the application of Anuj Rana, who is undisputedly the majority shareholder and personal guarantor of the Corporate Debtor and consequently an aggrieved person in relation to the order admitting the Corporate Debtor into CIRP. The appeal itself had been filed within limitation on 17.02.2025, the amendment was allowed on 22.04.2025 and an interim order was thereafter passed on 23.04.2025. Since the Respondents never challenged the order dated 22.04.2025 before the Hon'ble Supreme Court, the same attained finality and cannot now be indirectly reopened at the stage of final adjudication.

8. Ld. Counsel further submitted that the NCLAT Rules themselves contemplate correction of procedural defects through scrutiny and

rectification. If there had been any defect concerning authorisation, nomenclature or representation, the same could have been identified and cured at the Registry stage or through an appropriate order of the Tribunal. It was also submitted that the Appellant's locus is not dependent merely upon his description as a "Suspended Director", but upon his independent status as majority shareholder and personal guarantor. The Respondents, having participated in the proceedings after the amendment and having failed to challenge the order permitting such amendment, cannot now seek dismissal of the appeal on the same technical ground.

9. Ld. Counsel relied upon the following authorities in support of the proposition that bona fide procedural mistakes or misdescription of parties can be corrected and that procedural rules should not defeat substantive justice:

A. *Varun Pahwa v. Renu Chaudhary*, (2019) 15 SCC 628, wherein correction of an inadvertent error in the cause title was permitted;

B. *Jai Jai Ram Manohar Lal v. National Building Material Supply*, (1969) 1 SCC 869, wherein misdescription of the party was treated as a curable defect rather than a nullity;

C. *Purushottam Umedbhai & Co. v. Manilal and Sons*, AIR 1961 SC 325, concerning correction of the description of parties;

D. *Karuppaswamy & Ors. v. C. Ramamurthy*, (1993) 4 SCC 41;

E. *Munshi Ram v. Narsi Ram & Anr.*, (1983) 2 SCC 8; and

F. *Pankajbhai Rameshbhai Zalavadiya v. Jethabhai Kalabhai Zalavadiya*, (2017) 9 SCC 700, all recognising that bona fide procedural mistakes relating to parties should not defeat substantive claims.

G. *Commissioner of Income Tax v. Vatika Township Pvt. Ltd.*, (2015) 1 SCC 1, was relied upon for the principle of *lex prospicit non respicit* and the general rule against retrospective application of law.

H. *Satyadhan Ghosal v. Deorajin Debi*, (1960) 3 SCR 590, and

I. *Bhanu Kumar Jain v. Archana Kumar*, (2005) 1 SCC 787, were relied upon for the principle of finality and interlocutory res judicata.

J. *State of West Bengal v. Kamal Sengupta*, (2008) 8 SCC 612, was cited regarding the limited scope of review.

K. *I.C. Golaknath v. State of Punjab*, (1967) 2 SCR 762, and

L. *Hitendra Vishnu Thakur v. State of Maharashtra*, (1994) 4 SCC 602, were relied upon in support of the principle of prospective operation and protection of concluded transactions.

M. *Union Bank of India (Erstwhile Corporation Bank) v. Dinkar T. Venkatasubramanian*, I.A. No.3961 of 2022 in Company Appeal (AT) (Ins.) No.729 of 2020, was relied upon to submit that this Tribunal has no unrestricted power of review and that recall is available only in limited circumstances.

N. *Sukhbir Singh v. Verbio India Private Limited & Anr.*, Company Appeal (AT) (Ins.) No.2287 of 2024, decided on 06.07.2026, was cited to demonstrate that an objection of similar nature has previously been considered without preventing adjudication on merits.

O. *Kailash v. Nanhku*, (2005) 4 SCC 480, and

P. *Salem Advocate Bar Association, Tamil Nadu v. Union of India*, (2005) 6 SCC 344, were relied upon for the proposition that procedural requirements are intended to facilitate, and not obstruct, justice.

Q. *State of Punjab v. Shamlal Murari*, (1976) 1 SCC 719, was cited for the principle that procedural law is a servant of justice and not an obstruction to it.

R. *Parveen Kumar @ Parveen Chauhan v. State of Haryana & Ors.*, 2026 INSC 667, was relied upon regarding the limited scope of the doctrine of *per incuriam*, which operates only where a decision conflicts with a binding decision of an equal or larger Bench or is rendered in ignorance of a binding statutory or constitutional provision.

10. Ld. Counsel submits that in view of above-mentioned judgements of the larger and similar strength benches of the Honble Supreme Court of India on the subject issue and the relevant legal doctrines clearly establish that, the judgement dated 10.04.2026 of the Hon'ble Supreme Court in ***"Nitendra Kumar Tomer vs. Unox Spa; 2026 scc online sc 575"*** doesn't apply in the present matter at this final stage of the proceedings and the matter deserves to be decided on its own merits.

11. Ld. Counsel accordingly submitted that the judgment in *Nitendra Kumar Tomer* cannot be applied retrospectively so as to unsettle the order dated 22.04.2025, which was passed in the present proceedings after hearing the parties and was thereafter allowed to attain finality. It was further submitted that the principles of *stare decisis*, interlocutory res judicata,

prospective operation and the limited jurisdiction of review and recall operate against reopening the said order merely because a subsequent judgment has been rendered. *Dhanlaxmi Electricals*, according to the Appellant, also cannot be mechanically applied since it was rendered by a two-Member Bench on materially different facts and circumstances.

12. Ld. Counsel further drew attention to Rules 16, 22 and 26 of the NCLAT Rules, 2016. Rule 16 confers upon the Registrar functions including registration of appeals and receipt of applications for amendment; Rule 22 prescribes the manner of presentation of appeals and accompanying documents; and Rule 26 provides for scrutiny of appeals and documents, return of defective documents for compliance, and the power of the Registrar to permit rectification or amendment and extend the time for curing defects.

13. Ld. Counsel submitted that these provisions demonstrate a procedural mechanism specifically designed to identify and cure defects rather than immediately terminate proceedings. Thus, any defect concerning authorisation, nomenclature or representation could have been pointed out at the scrutiny stage and, in the present case, was in any event cured by the judicial order dated 22.04.2025 permitting amendment of the cause title. The Respondents therefore cannot use a curable procedural issue to defeat adjudication of the appeal on merits.

14. Coming to the merits of the case, Ld. Counsel submitted that the CIRP mechanism under the IBC is intended for resolution and preservation of value and cannot be utilised as a substitute for recovery of a disputed debt. Respondent No.1 was required under Purchase Order A07P28 dated

15.11.2022 to supply 1,75,000 kg, approximately 95,108 sq. metres, of Virgin HDPE Pond Liner, SKU-NEEICI312, 2 mm thick, plain black, 3 metres width, tear strength ASTM D1004 >240 N, with five-year guarantee, at Rs.110 per kg, amounting to Rs.2,27,15,000/- including GST. However, the invoices merely described the material as “Plastic Sheet HDPE POND LINER” without mentioning the required “Virgin” specification, ASTM standard or SKU, and the requisite Manufacturer’s Test Certificates were also not supplied.

15. He pointed out that when the material was opened at the NTPC site, quality deficiencies were noticed and NTPC officials also raised objections regarding the testing methodology and required testing in accordance with the contractual parameters of tensile stress and tear strength. The Corporate Debtor repeatedly sought inspection, proper testing, rectification of defects, MTC reports, warranty documentation and proper invoices. The dispute was therefore not an afterthought but had arisen contemporaneously during the supply and acceptance process.

16. Ld. Counsel relied upon the correspondence exchanged between the parties, including the demand notice and the reply dated 06.03.2024, wherein the Corporate Debtor specifically raised defective material, mismatch with specifications, delayed supply and breach of Purchase Order. It was submitted, relying upon *Mobilox Innovations Pvt. Ltd. v. Kirusa Software Pvt. Ltd.*, (2018) 1 SCC 353, that such a genuine, plausible and pre-existing dispute is sufficient to defeat a Section 9 application. It was further submitted that the Ld. NCLT failed to properly appreciate the failed test reports, work-

site photographs and contemporaneous correspondence and erroneously treated the defence as a “moonshine” objection.

17. Ld. Counsel further contended that the disputed invoices and quantities must be examined against the actual Purchase Orders. The account position relied upon by the Appellant shows total payable amounts under the Purchase Orders of Rs.2,59,30,225.29, against which Rs.2,06,33,776/- had already been paid, leaving Rs.52,96,449.29/- subject to proper invoicing and test documentation. The Appellant also disputes quantities allegedly supplied beyond the Purchase Orders.

18. Ld. Counsel submitted that the subsequent conduct of NTPC further corroborates the existence of the dispute. NTPC raised concerns regarding the HDPE liner work and, on 19.07.2024, informed the Corporate Debtor that the work had not resumed and required completion of the balance work. The Corporate Debtor had also informed NTPC that the material was required to comply with the five-year warranty and testing requirements and that Respondent No.1 had not furnished the requisite warranty certificate.

19. Ld. Counsel lastly pointed out that even after commencement of CIRP, the issue concerning the quality of the HDPE liner continued. The RP was impleaded as Respondent No.2 on 23.12.2025; this Tribunal thereafter directed him on 06.02.2026 to file an affidavit concerning the goods supplied and the objections of the principal employer. The Appellant had already requested joint testing on 13.06.2025 but received no effective response. The Appellant subsequently filed a counter affidavit dated 11.03.2026 and an

additional affidavit dated 07.05.2026, relying upon the CoC minutes and NTPC communications concerning damaged HDPE liner work.

20. Ld. Counsel emphasised that the test reports placed on record also indicate deficiencies in tensile strength and thickness of the HDPE liner and that the Appellant's case is that the material supplied by Respondent No.1 remained unusable/rejected at the NTPC project. It was further submitted that the Corporate Debtor continues to maintain itself and has arbitration claims stated to be worth more than Rs.35 crore pending. He accordingly prayed that, in view of the foregoing facts, documents, test reports, contemporaneous correspondence and legal authorities, the technical objection raised by the Respondents be rejected, the appeal be adjudicated on its merits and the reliefs sought in the Memo of Appeal be granted, along with such further order as this Tribunal may deem fit in the interest of justice.

Submissions of Respondent No.1/ Operational Creditor

21. Ld. Counsel submits that the present appeal seeks to challenge the admission order by raising objections concerning MTCs, ASTM Codes, warranty and quality of the material, none of which, according to the Respondent, constituted a genuine dispute prior to issuance of the Section 8 demand notice. The same objections were already considered by the Learned Adjudicating Authority and do not establish any pre-existing dispute.

22. He submits that the test reports relied upon by the Appellant in I.A. No. 2408/2025 were procured after commencement of CIRP and without the authorization of the Resolution Professional. The reports themselves record

that the samples were not drawn by the laboratory and that the results relate only to the items tested. Such post-CIRP reports, therefore, cannot retrospectively establish a pre-existing dispute.

23. He submitted that the NTPC letter dated 12.03.2025 merely sought an updated work schedule and manpower deployment for completion of the HDPE liner work and did not raise any objection regarding the quality or specification of the material. The material had been laid, tested and accepted at the NTPC site, and the communication was concerned with completion timelines.

24. Ld. Counsel submits that, upon commencement of CIRP, the management and control of the Corporate Debtor vested in the Resolution Professional under Sections 17(1)(b) and 23(2) of the IBC. The erstwhile Director, therefore, had no authority to independently undertake testing or correspondence on behalf of the Corporate Debtor, and documents generated through such post-CIRP activities cannot be relied upon to create a dispute.

25. It is submitted that the four objections relied upon by the Appellant are: (i) non-submission of MTC; (ii) non-mention of ASTM Code on Invoice; (iii) Warranty; and (iv) Quality of the Material.

26. Ld. Counsel submits that a Manufacturing Test Certificate (MTC) was provided with each and every invoice issued, as the material could not be offloaded at the NTPC site without the corresponding MTC. Annexure-1 (Colly.) contains the invoice-wise MTC details along with a sample invoice and

MTC. The allegation of non-supply of MTCs is, therefore, factually unsustainable.

27. He further submits that although the ASTM (American Society for Testing and Materials) Codes were not separately mentioned on the invoices, they were duly specified in the corresponding MTCs supplied with each invoice. Hence, the relevant technical specifications were available in the accompanying documentation, and non-mention of the ASTM Codes on the invoice itself does not establish any deficiency in the material.

28. Ld. Counsel submitted that the Respondent had argued that there was a provision of a 5-year warranty on the supplied material. He submits that the Purchase Order dated 09.05.2022 provided for a 12-month warranty and not a five-year warranty. The last invoice was raised on 27.11.2023, and no complaint regarding the quality of the material was raised by the Appellant during the contractual warranty period. The allegation of a five-year warranty is thus contrary to the contractual record.

29. He submits that no contemporaneous communication regarding defective quality of the material has been produced. The material was supplied with the requisite documentation and accepted at the NTPC site. During the proceedings before the Ld. Adjudicating Authority, when the Appellant was specifically asked to produce any communication concerning the quality of the goods supplied, no such contemporaneous complaint was produced. He contended that none of the aforesaid objections was raised prior to issuance of the Section 8 demand notice. The Appellant cannot retrospectively create a pre-existing dispute through documents generated or obtained subsequently.

30. Ld. Counsel further submits that the test reports relied upon in I.A. No. 2408/2025 were obtained after commencement of CIRP and without the sanction or knowledge of the Resolution Professional. The erstwhile management could not independently undertake such activities on behalf of the Corporate Debtor, and the subsequent reports cannot be relied upon to establish a dispute which did not exist prior to the demand notice.

31. He submitted that the Appellant has sought to introduce documents and objections in a piecemeal manner, including through additional-document applications before the NCLT, Cuttack. The Respondent contends that the same approach has been continued before this Tribunal and that such subsequent material ought not to be permitted to defeat the admission order. The Respondent accordingly seeks dismissal with exemplary costs.

32. Ld. Counsel relies upon the judgements of Hon'ble SC in “**Mobilox Innovations Pvt. Ltd. v. Kirusa Software (2018) 1 SCC 353**” for the proposition that the dispute under Section 9 must be real and genuine and not –, hypothetical or illusory, and must have been raised prior to receipt of the Section 8 demand notice. He further places reliance upon “**Sabarmati Gas Limited v. Shah Alloys Limited (2023) 13 SCC 229**” for the principle that, for rejection of a Section 9 application, the dispute must be pre-existing, i.e. raised before issuance of the demand notice.

33. He submits that on a conjoint reading of Sections 8 and 9 of the IBC, it is submitted that the dispute relied upon by the Corporate Debtor must be **real, genuine and pre-existing**. A sham, illusory or subsequent dispute cannot defeat initiation of CIRP. In the present case, the objections regarding

MTCs, ASTM Codes, warranty and quality were not raised contemporaneously, while the additional test reports were procured only after commencement of CIRP. Such subsequent material cannot, therefore, displace the admission order based upon the contemporaneous record.

34. Ld. Counsel submits that the test reports relied upon in I.A. No. 2408/2025 are untenable, inter alia, for the following reasons:

- a.** The reports expressly state that the samples were not drawn by the laboratory and that the results relate only to the items tested.
- b.** The reports contain disclaimer clauses restricting their partial reproduction or use as evidence without prior written permission.
- c.** The testing was undertaken after commencement of CIRP and without authorization of the Resolution Professional; consequently, the reports cannot be relied upon to retrospectively establish a pre-existing dispute.
- d.** The reports also contain references to amendment reports, which, according to the Respondent, further affect their evidentiary value.

35. Summing up his arguments Ld. Counsel states that the Learned NCLT, in paragraph 21 of the admission order, specifically recorded that no dispute regarding the quality or specification of the material was raised contemporaneously or prior to issuance of the Section 8 demand notice. The Appellant had also made part-payments under the purchase orders and accepted the deliveries without protest. These circumstances demonstrate

that no pre-existing dispute existed and that the subsequent quality objections cannot retrospectively create one.

36. In view of the above, it is submitted that the present appeal is devoid of merit. The objections regarding MTCs, ASTM Codes, warranty and quality were either answered by the contemporaneous record or were never raised before issuance of the Section 8 demand notice. The test reports relied upon by the Appellant were obtained post-CIRP, without authorization of the Resolution Professional, and cannot be used to manufacture a pre-existing dispute. Accordingly, the Respondent prays that Company Appeal be dismissed in limine with exemplary costs.

Submissions of Respondent No.2/ RP

37. The Resolution Professional was not initially impleaded as a party to this proceeding. He has been impleaded as a party consequent to order dated 23.12.2025 by this Tribunal.

38. RP was further directed to submit an affidavit regarding the progress of CIRP vide order dated 06.02.2026 by this Tribunal. The RP was directed to specifically state the position with regard to goods supplied by the Respondent No.1 to the CD and more particularly, if there is any objections as to its quality by the principal employer NTPC. Accordingly, he has submitted the up-to-date progress of on the NTPC work site at Badarpur, which has been taken on record.

ANALYSIS AND FINDINGS

39. We have heard the Learned Counsel appearing for the parties and perused the pleadings, documents and material placed on record.

40. Whether the present Appeal is maintainable in the manner in which it is presently being prosecuted by the Appellant and, if so, whether the Impugned Order dated 30.01.2025 passed by the Adjudicating Authority admitting the Application under Section 9 of the Code calls for any interference?

41. The Impugned Order dated 30.01.2025 was passed by the Adjudicating Authority, National Company Law Tribunal, Cuttack Bench, in CP (IB) No. 36/CB/2024, whereby the Application under Section 9 of the Code preferred by Virendra Prakash Gupta, Proprietor of Virendra Textiles, against Neelkantham Systems Pvt. Ltd. ("Corporate Debtor") was admitted. The Adjudicating Authority recorded an outstanding principal amount of Rs.1,46,58,247/-, against a total claim of Rs.1,56,26,446/-, and consequently initiated the Corporate Insolvency Resolution Process ("CIRP") against the Corporate Debtor.

42. The present Appeal was initially filed on 11.02.2025 in the name of Neelkantham Systems Pvt. Ltd., through Anuj Rana, described as its Director. It is not in dispute that by the date of the Impugned Order, CIRP had already been initiated and an Interim Resolution Professional (IRP) had been appointed. The effect of admission of the Section 9 Application and commencement of CIRP, therefore, assumes significance in determining the

authority in whom the management and affairs of the Corporate Debtor stood vested at the time when the Appeal was instituted.

43. During the pendency of the Appeal, an application IA No. 2408 of 2025 was filed seeking amendment of the cause title, pursuant to which this Tribunal, by order dated 22.04.2025, permitted the Appeal to be prosecuted in the individual capacity of Anuj Rana as Ex Director of Corporate Debtor. The case of the Appellant is that the original filing contained only a procedural or curable defect in the description of the Appellant; that the Appeal itself had been instituted within the period prescribed under Section 61(2) of the Code; and that the subsequent amendment merely corrected the description of the person prosecuting the Appeal. It is therefore contended that the amendment would relate back to the original date of institution and that the Appeal cannot be rejected on such a technical ground.

44. The Respondent, on the other hand, has questioned the very competence of the Appeal as originally instituted. It is submitted that, once the Section 9 Application had been admitted and the IRP appointed, the management of the Corporate Debtor stood vested in the IRP by operation of Section 17(1)(a) of the Code. According to the Respondent, Anuj Rana, being a suspended Director, could not thereafter institute or prosecute an appeal in the name of the Corporate Debtor. The objection, therefore, is not merely to an incorrect description or defective authorisation but to the competence of the proceeding itself.

45. The distinction between a defective proceeding and an incompetent proceeding is material. A procedural defect in an otherwise competent

proceeding may, depending upon the nature of the defect, be capable of correction, and an amendment may in appropriate cases relate back to the date of institution. The position is materially different where the person instituting the proceeding had no authority to institute it in the name of the entity on whose behalf the proceeding purports to have been filed. In such a case, the question is anterior to the question of curability, namely, whether there was a legally maintainable proceeding in existence from the outset.

46. Section 17(1)(a) of the Code provides that, from the date of appointment of the Interim Resolution Professional, the management of the affairs of the Corporate Debtor shall vest in the Interim Resolution Professional. The provision consequently brings about a statutory shift in the management and control of the Corporate Debtor upon commencement of CIRP. The suspended management does not cease to have any legal existence, but its authority to manage the affairs of the Corporate Debtor is taken away in the manner contemplated by the Code. The effect of this statutory vesting must necessarily be considered while examining an appeal instituted in the name of the Corporate Debtor after admission of the insolvency application.

47. The issue is no longer res integra. The Hon'ble Supreme Court in **Nitendra Kumar Tomer, Suspended Director, Ambro Asia Private Limited v. Unox S.P.A. & Anr., 2026 INSC 356**, decided on 10.04.2026, considered a materially similar situation where, after admission of a Section 9 Application and appointment of an IRP, a suspended Director instituted an appeal in the name of the Corporate Debtor and subsequently sought permission to amend the cause title so as to prosecute the appeal in his individual capacity.

48. In **Nitendra Kumar Tomer**, the Hon'ble Supreme Court examined the interplay between Section 17(1)(a) and Section 61(2) of the Code and held that an appeal instituted by a suspended Director in the name of the Corporate Debtor after commencement of CIRP was not merely defective, but was **wholly incompetent and not maintainable in its very inception**. The Hon'ble Supreme Court further held that, although an appeal could have been filed by the suspended Director in his own name, such appeal was required to be instituted within the period prescribed by Section 61(2), namely thirty days, with a further period of fifteen days being available for condonation where sufficient cause was shown.

49. The chronology in the present case assumes significance in this context. The Impugned Order was passed on 30.01.2025 and the Appeal was filed on 11.02.2025. However, it was filed in the name of the Corporate Debtor through Anuj Rana. The application for amendment seeking to prosecute the Appeal in the individual capacity of Anuj Rana was permitted only on 22.04.2025. Thus, although the original filing was within thirty days of the Impugned Order, the legally competent form in which the suspended Director seeks to prosecute the Appeal came into existence, only after expiry of not merely the initial thirty-day period but also the further condonable period contemplated under Section 61(2) of the Code.

50. The Appellant seeks to overcome this difficulty by contending that the original Appeal was already pending and that the subsequent amendment merely corrected its description. Such submission would have considerable force, if the original proceeding was otherwise competent and suffered from

an irregularity in its presentation, description or authorisation. The question before us, however, is whether Anuj Rana could, after commencement of CIRP, institute an appeal in the name of the Corporate Debtor, whose management had statutorily vested in the IRP. Having regard to Section 17(1)(a), the answer has to be examined not as a question of mere procedural form but as one concerning the competence of the proceeding itself.

51. The principle laid down in *Nitendra Kumar Tomer (Supra)* directly addresses this distinction. The Hon'ble Supreme Court considered the argument that the defect could be cured by amendment and that the amended appeal should relate back to the original date of filing. The said contention was not accepted, because relation back presupposes the existence of a competent proceeding capable of being amended. Where the original proceeding is itself incompetent, an amendment made subsequently cannot retrospectively confer jurisdiction or statutory competence upon it.

52. The limitation provision contained in Section 61(2) of the Code also cannot be considered independently of the identity and competence of the person prosecuting the appeal. The Code prescribes a specific and limited appellate period, and the proviso permits a further period not exceeding fifteen days upon satisfaction of sufficient cause. The legislative scheme consequently places a strict outer limit upon the exercise of appellate jurisdiction. Once that period has expired, the provision does not contemplate conversion of an incompetent proceeding into a competent appeal by changing the identity of the Appellant.

53. In the present case, the original Appeal filed in the name of the Corporate Debtor cannot, therefore, be treated merely as an appeal filed by Anuj Rana with an incorrect description. The material circumstance is that, on the date of filing, the Corporate Debtor was already undergoing CIRP and its management had vested in the IRP. The subsequent amendment of 22.04.2025 sought to place Anuj Rana in the position of the Appellant in his own capacity, only after expiry of the statutory period under Section 61(2). On these facts, the amendment cannot have the effect of retrospectively creating a competent appeal.

54. We are conscious that procedural rules ordinarily exist to advance the cause of justice and that courts and tribunals do not ordinarily permit technical defects to defeat substantive rights. However, the present question is not founded upon a mere procedural irregularity. The statutory scheme of the Code itself determines as to who controls the Corporate Debtor after commencement of CIRP and separately prescribes the period within which an appeal against an order under Sections 7, 9 or 10 is required to be filed. The question consequently involves compliance with substantive statutory requirements rather than a mere defect in form.

55. The fact that this Tribunal, by order dated 22.04.2025, permitted amendment of the cause title does not alter the legal position. In **Nitendra Kumar Tomer** (Supra), the Hon'ble Supreme Court was also confronted with orders permitting amendment, which had not been challenged at the relevant stage. Nevertheless, the Hon'ble Supreme Court held that such orders could not override the statutory mandate of the Code, particularly where limitation

under Section 61(2) had expired. The principle of finality of an interlocutory order cannot be employed to sustain a proceeding which the statute itself does not permit to be maintained.

56. The distinction drawn by the Hon'ble Supreme Court in **Nitendra Kumar Tomer** between curable defects in otherwise competent appeals and an appeal which is incompetent at its inception is of particular relevance. Decisions concerning procedural defects, including cases where a competent appeal suffered from an irregularity in its presentation or authorisation, cannot be applied to a case where the person instituting the appeal in the name of the Corporate Debtor lacked authority to do so after commencement of CIRP. The present case falls within the latter category.

57. In view of the aforesaid statutory position and the binding pronouncement of the Hon'ble Supreme Court, we find that the Appeal, as originally instituted in the name of the Corporate Debtor through its suspended Director, was not maintainable in that form. The subsequent amendment dated 22.04.2025, having been made after expiry of the period prescribed under Section 61(2), could not convert the incompetent proceeding into a competent appeal in the individual name of Anuj Rana. The question of interference with the Impugned Order on merits would, strictly speaking, therefore not arise. However, since extensive submissions have been advanced on the merits and the correctness of the order admitting the Section 9 Application has been questioned in detail, we consider it appropriate to examine the substantive challenge as well, albeit as an alternative consideration.

58. The principal substantive challenge raised by the Appellant is that the Adjudicating Authority failed to appreciate the existence of a genuine and pre-existing dispute concerning the quality of the HDPE pond liner supplied by the Respondent. According to the Appellant, the purchase order contemplated supply of **Virgin HDPE Pond Liner of 2.00 mm thickness**, along with the requisite Material Test Certificates (MTCs), warranty and compliance with the specified testing standards. Reliance has been placed upon the test reports dated 23.01.2023 and 23.02.2023, as well as the correspondence exchanged between the parties and with NTPC, to contend that the balance consideration was withheld on account of deficiencies in the material and non-compliance with contractual requirements.

59. The relevant contractual transactions commenced with Purchase Order No. A07P14 dated 09.05.2022, relating, inter alia, to non-woven geotextile and geocell. Thereafter, Purchase Order No. A07P28 dated 01.11.2022/15.11.2022 was issued for 1,75,000 kilograms of Virgin HDPE Pond Liner of 2.00 mm thickness, with the material specifications and related contractual requirements forming part of the transaction. The first relevant supply was invoiced on 25.11.2022 under Invoice No. VT/22-23/2558. The Appellant does not dispute that supplies were made and substantial payments were released. According to the material placed on record, an amount of approximately Rs.2,07,14,776/- had been paid, while the principal amount of Rs.1,46,58,247/- remained unpaid.

60. The Appellant relies, in particular, upon Test Report No. D230114033/D230114033-10 dated 23.01.2023, which recorded the

thickness of the tested material as 1.51mm, as against the contractual specification of 2.00mm. It further relies upon the Test Report No. A1D230214024/D230214024-10 dated 23.02.2023, wherein the tear strength was recorded as 153.8 N, which, according to the Appellant, was below the contractual requirement of 314 N or the minimum permissible value of 249 N. These reports are relied upon to demonstrate that the objection regarding quality was not an afterthought developed only after issuance of the demand notice.

61. The records show that issues concerning testing and measurement had arisen during the interaction with NTPC. On 21.02.2023, the NTPC officials raised an issue concerning the method and units used in the test reports. The Corporate Debtor thereafter stated that the measurement units required correction and, on 01.03.2023, corrected material/test particulars were communicated to NTPC. The Adjudicating Authority examined this aspect and came to the conclusion that the relevant deficiency identified at that stage related to the use of incorrect measurement units in calculation of tensile and tear strength, which was subsequently rectified.

62. The Appellant, however, relies not only upon the laboratory reports but also upon subsequent correspondence. It refers to its communication dated 11.09.2023, wherein issues concerning quality, delayed supply and liquidated damages were raised, followed by the response of Virendra Textiles disputing the allegations. The Appellant thereafter reiterated its position on 14.12.2023, maintaining that payment remained subject to inspection, approval and compliance with the contractual requirements. On 08.01.2024, Virendra

Textiles sought release of the outstanding amount and also approached NTPC in relation to the payment. These circumstances, according to the Appellant, establish that the dispute existed prior to issuance of the Section 8 demand notice.

63. The Respondent disputes this characterization of the correspondence and submits that the documents do not disclose a genuine dispute of the nature contemplated by Section 8 and Section 9 of the Code. It is contended that the MTCs accompanied the invoices and that the ASTM/SKU codes were reflected in the MTCs, even if they were not separately reproduced on the invoices. The Respondent further relies upon the contractual warranty period and submits that no genuine quality complaint was raised within the relevant period. The Respondent also places reliance upon the subsequent communications with NTPC and contends that the material supplied had in fact been laid, tested and accepted.

64. The governing test at the stage of Section 9 is well settled. In ***Mobilox Innovations Pvt. Ltd. v. Kirusa Software Pvt. Ltd., (2018) 1 SCC 353***, the Hon'ble Supreme Court held that the Adjudicating Authority is required to determine whether there is a plausible contention requiring further investigation and that the dispute must not be a patently feeble legal argument, unsupported assertion, spurious, hypothetical or illusory dispute. At the same time, the Adjudicating Authority is not required to conduct a detailed adjudication or undertake a mini-trial into the merits of the dispute at the stage of admission.

65. The same principle was reiterated by Hon'ble Supreme Court in ***Sabarmati Gas Ltd. v. Shah Alloys Ltd., (2023) 13 SCC 229***, wherein the SC emphasised that the disputes contemplated under the Code must be real and genuine and not a sham defence raised merely to defeat the insolvency proceedings. Thus, the mere existence of a correspondence or an assertion of breach does not, by itself, conclude the issue in favour of the Corporate Debtor. The nature, timing and substance of the dispute have to be considered to determine whether it satisfies the threshold contemplated by ***Mobilox***.

66. Applying that test to the present record, the Adjudicating Authority did consider the objection concerning the contractual codes and the test reports. In relation to the requirement that the vendor mention SKU/ASTM codes in the invoices/bills, the Adjudicating Authority noticed that the invoices did not contain those codes, but also observed that the Corporate Debtor had not established that the Operational Creditor was specifically required to mention those codes in the invoice dated 25.11.2022 in the manner asserted. The SKU/ASTM Codes were mentioned in the MTCs attached with Invoices. The Adjudicating Authority consequently did not regard that circumstance, by itself, as establishing a pre-existing dispute.

67. The Adjudicating Authority also considered the test report and the subsequent communication with NTPC. From the material before it, the Adjudicating Authority found that the issue identified in relation to the testing was substantially one concerning the units used in the calculations and that the corrected material was subsequently sent to NTPC on 01.03.2023. It

therefore did not regard the testing issue as demonstrating a continuing and genuine dispute concerning the quality of the goods supplied. The finding was thus not rendered without reference to the documents relied upon by the Corporate Debtor.

68. The correspondence dated 11.09.2023, 14.12.2023 and the subsequent communications cannot, however, simply be disregarded on the ground that no communication whatsoever existed before the Section 8 notice. There was correspondence between the parties concerning quality and contractual compliance. The relevant question under **Mobilox** is whether the contents of that correspondence disclose a genuine dispute requiring further investigation or whether the dispute, viewed in the context of the entire transaction, remained insufficient to displace the claim of operational debt. On that question, the Adjudicating Authority considered the correspondence in conjunction with the testing material and the explanation regarding rectification.

69. The chronology also assumes importance. The supply commenced in November 2022; testing issues arose in January-February 2023; the measurement-unit issue was subsequently addressed in March 2023; substantial payments were made during the course of the transaction; and objections concerning the outstanding amount were subsequently exchanged between the parties. The Section 8 demand notice was issued on 14.02.2024 and the Corporate Debtor replied on 06.03.2024, referring to defective material, mismatch with specifications, delayed supply and breach of the

purchase order. Thus, the Appellant cannot be said to have raised its entire defence for the first time after commencement of the insolvency proceedings.

70. At the same time, the existence of such correspondence does not automatically satisfy the threshold under **Mobilox**. The test reports dated January and February 2023, relied upon by the Appellant, were themselves part of the factual matrix considered by the Adjudicating Authority. The Adjudicating Authority examined the explanation furnished regarding the test methodology and measurement units and found that the issue had subsequently been rectified. The finding that the material before it did not disclose a genuine dispute requiring further investigation is therefore a conclusion reached upon appreciation of the material then available and cannot be characterized as having been arrived at without consideration of the Appellant's case.

71. The Appellant has also relied upon the alleged non-supply of MTCs, warranty certificates and ASTM/SKU codes. The Respondent's case is that MTCs were supplied with the invoices and that the ASTM codes were contained therein, while the Appellant disputes the adequacy and contractual compliance of such documentation. These competing assertions may raise questions regarding contractual performance, but at the Section 9 stage the enquiry remains confined to whether the defence constitutes a real pre-existing dispute within the meaning of the Code. The Adjudicating Authority, after considering these aspects, found that the material did not establish such a dispute of the requisite nature.

72. It is also relevant that certain additional material relied upon by the Respondent relates to events subsequent to commencement of CIRP. Such material cannot retrospectively determine whether a dispute existed before the Section 8 notice, nor can subsequent events be used to manufacture a pre-existing dispute. Similarly, objections concerning the authority of the suspended management to place additional material after commencement of CIRP must be considered in the context of the statutory scheme under Sections 17 and 19 of the Code. The question before us, however, is principally whether the material existing before initiation of the Section 9 proceedings was sufficient to meet the **Mobilox** threshold.

73. The Appellant's reliance upon the subsequent laboratory reports also requires a distinction to be maintained between the reports forming part of the pre-CIRP factual matrix and documents obtained or relied upon subsequently. The January and February 2023 reports preceded the CIRP and therefore cannot be rejected merely on the ground of being post-CIRP documents. The Respondent's objections regarding the manner of sampling and the disclaimers appearing in later reports may affect their evidentiary weight, but they do not by themselves answer the separate question whether a genuine dispute existed before issuance of the Section 8 notice.

74. The Adjudicating Authority ultimately examined the material in the context of the correspondence with NTPC. The communication dated 30.04.2024 from NTPC called upon the Corporate Debtor to resolve the balance payment issue, while the Corporate Debtor's communication dated 25.05.2024 stated that payment had been withheld owing to the subsisting

quality issues and absence of valid test reports in accordance with the purchase terms. These communications indicate that the payment issue continued to remain unresolved. Nevertheless, the Adjudicating Authority had before it the earlier testing material and the explanation regarding rectification and, upon an overall consideration, concluded that the dispute did not meet the standard required under **Mobilox**.

75. At the stage of Section 9, the Adjudicating Authority was not required to undertake a detailed technical determination as to the precise thickness, tear strength, testing methodology, contractual significance of every test parameter, or the ultimate liability of the parties under the purchase orders. Those questions may, in an appropriate contractual proceeding, require examination of evidence and technical material. The limited enquiry under the Code was whether the defence raised by the Corporate Debtor constituted a genuine pre-existing dispute sufficient to prevent admission of the insolvency application. On the material placed before it, the Adjudicating Authority answered that question in the negative.

76. During the CIRP, in March–April 2025, the RP came to know that the Corporate Debtor had been awarded a work order dated 03.02.2022 by NTPC for carrying out various works at NTPC, Badarpur, New Delhi. As the erstwhile management had not handed over the relevant records, the RP filed an application under Section 19(2) of the Code. The RP also contacted NTPC to ascertain the status of the HDPE liner and whether any quality complaint had been raised. NTPC informed that 2,000 sq. metres of liner had been installed by the erstwhile management as on 28.02.2025. The RP subsequently

arranged for installation of the remaining 2,000 sq. metres through a third-party applicator during April–May 2025. No quality-related complaint by NTPC is reflected in the correspondence placed on record. The RP in his affidavit has clearly noted that the management of principal employer NTPC did not raise any concern about the quality of material supplied by the Operational Creditor which was present on the site. Their only request to RP related to expeditious completion of work. The RP subsequently got the work completed through third party linear applicator using the material available at the site.

77. We note that subsequent to initiation of CIRP when the RP was in charge of Corporate Debtor, the appellant has got the sample material supplied by Respondent No.1 on 19.03.2025. These samples were taken by Appellant to the testing lab themselves. The reports and state that the results relate only to the items tested. We also note from the disclaimer clause of the testing lab that partial reproduction or use of report in any court of law without the prior written permission of the lab was prohibited under para 12.5 and 13.1 of the disclaimer clause. Further, such testing was done without the authority from the RP who was in charge of the CD. Such an action was beyond the remit of appellant in terms of Section 14 of the Code. In these circumstances, such laboratory reports, by themselves, do not conclusively establish either the absence of defects or the existence of a genuine pre-existing quality dispute. The principal employer on the other hand, on no occasion has raised any issue with the quality of material.

78. On a review of the purchase orders, invoices, payments, testing material, correspondence between the parties and the communications with NTPC, we do not find any patent error in the manner in which the Adjudicating Authority applied the test laid down in **Mobilox**. The material relied upon by the Appellant may indicate that certain issues concerning testing, contractual compliance and payment were raised between the parties, but the Adjudicating Authority considered those issues and found them insufficient to constitute a genuine dispute requiring further investigation for the purposes of Section 9. In the absence of any perversity or material irregularity in that assessment, the finding does not call for interference in appellate jurisdiction.

79. In the present matter it is a fact that principal amount of Rs.1,46,58,247/- along with interest component of Rs.9,68,199/- has not been paid by the Corporate Debtor on the grounds of quality related issues. The appellant has stated on record that the warranty period for the goods supplied was five years but it is the submission of the Respondent No.1 that as per the purchase order the warranty period is twelve months. The respondent has further stated that the objections related to quality was raised after the warranty period i.e. after the expiry of fr12-month period from the supply. We note from Clause-8 of the purchase Order relating to warranty (Page-238 of APB) that the warranty was for a period of twelve months only. We have also noted from the records including the correspondence of CD and RP with the principal employer NTPC, that it has not raised any objection related to quality of the material supplied. What comes out clearly from the above that both debt and default are proven in this case. The issues raised by

the Appellant are in the nature of moonshine defence, and not bonafide pre-existing disputes.

80. For the foregoing reasons, the Appeal fails at the threshold on the question of maintainability, having regard to the statutory scheme under Sections 17(1)(a) and 61(2) of the Code and the law declared by the Hon'ble Supreme Court in ***Nitendra Kumar Tomer, Suspended Director, Ambro Asia Private Limited v. Unox S.P.A. & Anr., 2026 INSC 356***. Even otherwise, upon examining the challenge to the Impugned Order on merits, we find no ground warranting interference with the Adjudicating Authority's conclusion that the material placed before it did not disclose a pre-existing dispute of the nature contemplated by ***Mobilox Innovations Pvt. Ltd. v. Kirusa Software Pvt. Ltd., (2018) 1 SCC 353***. The Appeal is accordingly dismissed and the Impugned Order dated 30.01.2025 is affirmed. There shall be no order as to costs. Pending IAs, if any are closed.

[Justice Sharad Kumar Sharma]
Member (Judicial)

[Arun Baroka]
Member (Technical)

[Indevar Pandey]
Member (Technical)

Place: New Delhi

*Harleen/
Pragya (LRA)*