NATIONAL COMPANY LAW APPELLATE TRIBUNAL

PRINCIPAL BENCH, NEW DELHI

Comp. App. (AT) (Ins) No. 1781 of 2026

(Arising out of the Order dated 09.09.2026 passed by the Ld. National Company Law Tribunal, Ahmedabad Bench, Court – II in C.P. (IB) No. 346 (Ahm) Of 2025]

IN THE MATTER OF:

Mr. Abhay Sapre (Suspended Director of FTF Pharma Private Limited)
Having His Address At: B2-2102, Prestige Kensington Gardens, Near HMT Estate, Jalahali, Banglore-North, Karnataka – 560013
Email: abhaysapre1704@gmail.com

…Appellant

Versus

1. Immacule Lifesciences Private Limited
Having its registered office at
Village Thanthelwal, Ropar Road, Nalagarh, Dist. Solan, Himachal Pradesh - 174101
Email: info@immacule.in; viral@immacule.in

…Respondent No.1

2. Mr. Sunil Kumar Kedia
Interim Resolution Professional of
FTF Pharma Private Limited
IBBI/IPA-001/IP-P00028/2016-2017/10064
Having its registered office at 210-B, 21ST Century Business Center, Near Udhna Darwaja, Ring Road, Surat,Gujarat - 395002
Email: kedia_kedia@yahoo.com

…Respondent No.2

Present

For Appellant: Mr. Krishnendu Datta, Sr. Advocate with Mr. Gaurav H. Sethi, Mr. Rahul Kapoor, Mr. Rahul

	Pawar, Mr. Yash Tandon, Mr. A. Arora, Mr. Kartik Nagpal, Advocates.
For Respondent:	Mr. Abhishek Anand, Mr. Karan Kohli, Ms. Palak Kalra, Advocates. Mr. Sunil Kumar Kedia, IRP.

J U D G E M E N T

(04 .11.2026)

NARESH SALECHA, MEMBER (TECHNICAL)

1. The present appeal has been filed by the Appellant i.e., Mr. Abhay Sapre who is Suspended Director of FTF Pharma Private Limited under Section 61 of the Insolvency and Bankruptcy Code, 2016 **('Code')** against the Order dated 09.09.2026 **("Impugned Order")** passed by the Hon'ble National Company Law Tribunal, Ahmedabad Bench, Court- II **("Adjudicating Authority"**) in C.P. (IB) No. 346 (AHM) OF 2025].

Immacule Lifesciences Private Limited, who is an Operational Creditor is the Respondent No.1 herein.

Mr. Sunil Kumar Kedia, Interim Resolution Professional of FTF Pharma Private Limited (IBBI/IPA-001/IP-P00028/2016-2017/10064) is the Respondent No.2 herein.

2. The Appellant stated that the Corporate Debtor is a company incorporated under the Companies Act, 1956, in 2012 and is engaged primarily in pharmaceutical development and formulation research. After investing substantial time and resources in developing Phytonadione Injection, the Corporate Debtor intended to commercialise the product in the United States of

America by obtaining the requisite regulatory approval through an Abbreviated New Drug Application ("ANDA"). Since the Corporate Debtor was engaged in research activities rather than manufacturing, it approached the Operational Creditor, which was engaged in the manufacture of finished dosage products on a contractual basis.

3. The Appellant submitted that, following negotiations, the Corporate Debtor and the Operational Creditor executed a Technology Transfer Agreement ("**TTA**") dated 04.05.2022 for the technology transfer and development of the finished product, namely, Phytonadione Injection having a strength of 10 mg/ml, packaged in 1 ml amber glass vials, with a commercial batch size of 50 litres and conversion costs of USD 2.8 per vial, excluding applicable GST. The consideration specified under the Agreement was Rs.3,35,00,000, excluding GST. The Appellant contended that the claims subsequently raised by the Operational Creditor arose from this Agreement and could not be considered independently of the contractual obligations, deliverables and conditions governing the payment milestones.

4. The Appellant stated that, under Clauses 4.1, 4.3 and 4.7 of the TTA, read with the relevant annexures, the parties were required to undertake the technology-transfer activities in accordance with the prescribed responsibility matrix and technology-transfer plan. The Operational Creditor was responsible for various technical and logistical activities, including vendor qualification, procurement, analytical method validation, method transfer and qualification, and

the release of the API, excipients, packaging materials and exhibit batches, without any additional cost. Although the Corporate Debtor could be required to reimburse certain expenses incurred by the Operational Creditor, such reimbursement was subject to the applicable contractual conditions, including prior written authorisation wherever stipulated. The Appellant contended that the Operational Creditor could not unilaterally incur expenditure or raise invoices contrary to the allocation of responsibilities under the TTA and subsequently treat such disputed amounts as an undisputed operational debt.

5. The Appellant submitted that the TTA also prescribed specific conditions for the completion of payment milestones. Under Clause 6, read with Annexure IV and the relevant stability-study requirements, the entitlement to payment for Milestone 2 depended upon the timely completion of the prescribed three-month stability data for the exhibit batches, while Milestone 3 was linked to completion of the requisite six-month stability data for the prescribed temperature conditions. The Corporate Debtor contended that the completion and acceptance of the relevant deliverables were essential contractual prerequisites to the release of milestone payments. Therefore, merely raising invoices could not establish that the milestones had been completed or that the corresponding amounts had become unconditionally payable.

6. The Appellant contended that the dispute between the parties arose much before the issuance of the statutory demand notice dated 22.10.2024 and was evident from the contemporaneous correspondence exchanged during 2023 and

2024. The Operational Creditor raised Invoice No. IMSER/22-23/0089 dated 22.02.2023 for ₹20,38,319 towards third-party laboratory testing allegedly undertaken for the project. The Corporate Debtor disputed the invoice on the ground that the testing and release of excipients formed part of the Operational Creditor's contractual responsibilities and that the expenditure could not be transferred to the Corporate Debtor without compliance with the terms of the TTA.

7. The Appellant stated that, through an email dated 21.07.2023, the Corporate Debtor had already informed the accounts team of the Operational Creditor that the expenditure of ₹20,38,319 fell within the latter's scope of work. The Corporate Debtor further maintained that the Operational Creditor had chosen to outsource the activity to a third-party laboratory despite being responsible for undertaking the requisite work under the Agreement. Consequently, the Corporate Debtor expressly disputed its liability to bear such expenditure. The Appellant contended that the said correspondence demonstrated that the dispute concerning the invoice was not an afterthought raised in response to the insolvency proceedings but an existing contractual disagreement.

8. The Appellant submitted that the Corporate Debtor, through an email dated 26.12.2023, specifically communicated its objections to the Operational Creditor and identified the outstanding deficiencies in the project. The Corporate Debtor pointed out that the six-month stability data relating to the exhibit batches had not been furnished and disputed the invoice of ₹20,38,319 towards third-party

laboratory testing. It was reiterated that the relevant work was covered by the Operational Creditor's contractual responsibilities and that the Corporate Debtor's willingness to explore an amicable settlement could not be construed as an acknowledgment of liability. The Appellant contended that the request to resolve the matter amicably, including the statement that "We will settle down although amicably", instead demonstrated that the parties were attempting to resolve an existing disagreement concerning both the services rendered and the amounts claimed.

9. The Appellant further stated that the Corporate Debtor, by email dated 17.01.2024, again requested the Operational Creditor to provide the outstanding documents and data required under the Agreement. These included the stability protocol, updated stability data, final stability report, BET and sterility test data for the exhibit batches, withdrawal content and container content data, and the final in-use study protocol with its report. The Corporate Debtor specifically requested that the three-month and six-month stability data, together with the closure of the Out-of-Specification ("**OOS**") investigations, be prioritised. According to the Appellant, the said email clearly established that the deficiencies previously raised had remained unresolved and that the required deliverables had not been furnished in accordance with the contractual requirements.

10. The Appellant contended that the Operational Creditor failed to provide complete and timely stability data and supporting documents as contemplated under the TTA and its annexures. The three-month stability data for the relevant

temperature conditions were furnished only on 31.08.2023 and 11.09.2023, beyond the stipulated four-month period. The Appellant further submitted that the six-month stability data required for completion of Milestone 3 had not been fully furnished. In particular, the signed final stability report for the six-month sample at 25°C was received only on 10.04.2024, whereas the corresponding signed final report for the 40°C sample had not been received by the Corporate Debtor. The Corporate Debtor also relied upon the stability-study documentation to contend that the requisite testing and reporting for the 40°C sample had not been completed as required. Consequently, the Corporate Debtor disputed the Operational Creditor's entitlement to payment under Milestones 2 and 3, as the prescribed contractual conditions had not been fulfilled or accepted by the Corporate Debtor.

11. The Appellant stated that the dispute was further aggravated by concerns regarding the reliability of the OOS results and the adequacy of the investigations undertaken by the Operational Creditor. By email dated 06.08.2024, the Corporate Debtor expressed serious concern that multiple OOS results had been observed without proper investigation and that the root cause of the deviations had not been adequately established. The Corporate Debtor questioned why the 18-month samples had been analysed when the investigation concerning the 12-month samples remained incomplete and had not been properly conducted. It also stated that the analysis had not been undertaken with the Corporate Debtor's

approval and requested that all activities relating to the project be stopped immediately.

12. The Appellant submitted that, pursuant to the Operational Creditor's request for a signed communication regarding the deficiency in services, the Corporate Debtor issued a letter through an email dated 09.08.2024, requesting discontinuation of all activities relating to the Phytonadione Project. The letter recorded that OOS results had been observed in the submission batches from the six-month stability data onwards and that no proper investigation had been undertaken to identify the root cause. The Appellant contended that the email dated 06.08.2024 and the letter dated 09.08.2024 constituted clear documentary evidence of the dispute concerning the quality of services, the reliability of the reports and the Operational Creditor's failure to perform its obligations under the TTA. The project was consequently halted on account of the unresolved deficiencies, much before the statutory demand notice was issued.

13. The Appellant stated that the Operational Creditor thereafter issued a demand notice dated 22.10.2024 claiming amounts arising from the alleged non-payment of milestone invoices and the third-party laboratory testing invoice. The Corporate Debtor, through its reply dated 31.10.2024, specifically denied the liability claimed and set out the history of the disputes, including the deficiencies in the stability data, the non-completion of the prescribed deliverables and the improper investigation of OOS results. The reply also explained why the amounts claimed under Invoice Nos. IMSER/24-25/0006 and IMSER/24-25/0007,

relating to Milestones 2 and 3 respectively, were disputed, along with Invoice No. IMSER/22-23/0089 relating to third-party laboratory testing.

14. The Appellant further submitted that, in its reply to the demand notice, the Corporate Debtor explained that the technology transfer had been completed on 09.01.2023 and that the prescribed three-month stability reports ought to have been furnished within the stipulated period. However, the reports were received after substantial delay. With respect to Milestone 3, the Corporate Debtor pointed out that the requisite six-month stability reports for the specified temperature conditions had not been furnished in full. The Appellant contended that the Operational Creditor was therefore not entitled to claim payment for milestones whose contractual prerequisites had not been satisfied. The Corporate Debtor also disputed the third-party testing invoice on the ground that Clause 4.7, read with Annexure IIB, placed the relevant testing and release expenses within the Operational Creditor's responsibilities and that the TTA did not permit the Operational Creditor to recover such expenses without the requisite prior written approval. The Corporate Debtor maintained that no such approval, purchase order or contractual addendum had been obtained before engaging the third-party laboratory.

15. The Appellant stated that the Corporate Debtor's reply dated 31.10.2024 was followed by a response dated 24.12.2024 and a sur-rejoinder dated 13.02.2025, in the course of which the parties continued to dispute their respective contractual obligations and the amounts allegedly due. The Appellant

contended that the demand notice and the subsequent proceedings could not extinguish or override the disputes that had already arisen and been expressly communicated through the emails dated 26.12.2023 and 17.01.2024 and the communications dated 06.08.2024 and 09.08.2024. The Corporate Debtor maintained that the total claim of ₹2,18,03,319 raised by the Operational Creditor was disputed and was not payable in view of the alleged deficiencies in services and the non-fulfilment of the contractual conditions.

16. The Appellant submitted that, after the Operational Creditor filed the application under Section 9 of the Code, the Corporate Debtor filed its reply dated 22.01.2026, reiterating the existence of the pre-existing dispute and placing the relevant correspondence and contractual provisions on record. The Corporate Debtor also filed written submissions dated 13.08.2026, again highlighting the continuing disputes regarding the performance of the TTA, the outstanding stability data, the OOS investigations, the completion of Milestones 2 and 3 and the third-party laboratory testing charges. The Appellant contended that these documents were available before the Adjudicating Authority and were sufficient to demonstrate that the dispute was neither hypothetical nor raised merely to evade payment.

17. The Appellant contended that the Adjudicating Authority committed a material error in admitting the Section 9 application despite the documentary evidence establishing the existence of a dispute before the issuance of the demand notice. It was submitted that the Adjudicating Authority itself recorded in

paragraph 10(b) of the Impugned Order that there appeared to be a pre-existing dispute and some delay in the performance of the contract. Nevertheless, the Adjudicating Authority proceeded to hold that the disputes were not significant enough to erode the Operational Creditor's legitimate claim. The Appellant argued that this approach amounted to an impermissible adjudication of the merits of the contractual dispute at the stage of considering an application under Section 9 of the Code. Once a plausible pre-existing dispute was apparent from the record, the Adjudicating Authority was required to apply the statutory test governing the existence of a dispute rather than determine whether the Corporate Debtor's defence would ultimately succeed.

18. The Appellant relied upon the judgment of the Hon'ble Supreme Court in ***Mobilox Innovations Private Limited v. Kirusa Software Private Limited*****,** reported in (2018) 1 SCC 353, to contend that the Adjudicating Authority, while considering an application under Section 9 of the Code, is required to determine whether a plausible contention exists that necessitates further investigation and whether the dispute is supported by material on record. The Appellant submitted that the Adjudicating Authority is not required to be satisfied that the defence is likely to succeed, nor is it expected to conduct a detailed examination of the merits of the dispute. Where a dispute genuinely exists and is neither spurious, hypothetical nor illusory, the application under Section 9 must be rejected in accordance with the applicable provisions of the Code. In the present case, the contemporaneous emails, contractual provisions, disputed invoices and repeated

requests for outstanding data demonstrated a substantial contractual disagreement requiring investigation.

19. The Appellant further relied upon the judgment of the Hon'ble Supreme Court in ***GLS Films Industries Private Limited v. Chemical Suppliers India Private Limited,*** Civil Appeal No. 4019 of 2025, and submitted that the existence of a plausible pre-existing dispute, rather than the likelihood of the defence succeeding on merits, is the relevant consideration at the stage of admission of a Section 9 application. The Appellant contended that the Adjudicating Authority was not empowered to disregard the dispute merely because it considered the Operational Creditor's claim to be legitimate or the Corporate Debtor's objections to be insufficiently significant. The relevant inquiry was limited to whether a plausible dispute existed before the demand notice, and the documentary record in the present case clearly satisfied that test.

20. The Appellant also placed reliance upon the judgment of the Hon'ble Supreme Court in ***Rajratan Babulal Agarwal v. Solartex India Private Limited,*** reported in (2023) 1 SCC 115, to submit that the standard for examining a pre-existing dispute under the Code cannot be equated with the standard of proof applicable to the final adjudication of a civil suit. The Appellant contended that the Adjudicating Authority was required to examine whether the defence was supported by material and could not be dismissed as spurious, hypothetical or illusory. The emails exchanged between the parties, the outstanding stability reports, the concerns regarding the OOS investigations and the objections to the

invoices constituted documentary material supporting the Corporate Debtor's case. The Appellant therefore submitted that the dispute could not have been rejected at the admission stage merely because the Adjudicating Authority was of the view that the Operational Creditor had a legitimate claim.

21. The Appellant further relied upon the judgment of the Hon'ble Supreme Court in ***M/s S.S. Engineers v. Hindustan Petroleum Corporation Limited & Others,*** Civil Appeal No. 4583 of 2022, to contend that the proceedings under the Code are intended to address insolvency and bankruptcy and are not designed to operate as a debt-collection mechanism against solvent companies. It was submitted that CIRP ought not to be initiated to penalise a company for non-payment of disputed dues, particularly where the parties are engaged in a genuine contractual dispute concerning the performance of services and the fulfilment of payment obligations. The Appellant contended that the Operational Creditor was attempting to use the insolvency process as a recovery mechanism despite the unresolved disputes arising from the TTA.

22. The Appellant stated that the Impugned Order was contrary to the legislative intent and objectives of the Code, which include the reorganisation and insolvency resolution of corporate persons, maximisation of the value of assets, promotion of entrepreneurship and balancing the interests of all stakeholders. The Appellant contended that the Corporate Debtor was a functioning pharmaceutical company engaged in research and development and other ongoing pharmaceutical and medical projects. Its admission into CIRP, despite the pre-

existing dispute, would have serious consequences for its business operations, ongoing projects and stakeholders. The Appellant therefore submitted that the Code could not be invoked as a means of recovering disputed contractual dues when the statutory requirements for admission under Section 9 were not satisfied.

23. The Appellant contended that the Adjudicating Authority failed to properly appreciate the cumulative effect of the contemporaneous communications and the contractual provisions governing the parties' relationship. The disputes were not confined to a mere delay in payment but concerned the alleged non-performance and deficient performance of contractual obligations, the non-furnishing of required stability data, the adequacy of OOS investigations, the completion and acceptance of payment milestones, and the allocation of third-party laboratory testing expenses. The Appellant submitted that these disputes had arisen and had been repeatedly communicated before 22.10.2024, the date of the demand notice. The Adjudicating Authority's conclusion that the disputes were insignificant effectively required the Corporate Debtor to establish the merits of its defence at the admission stage, contrary to the principles laid down by the Hon'ble Supreme Court.

24. The Appellant accordingly contended that the Impugned Order dated 09.09.2026 was erroneous, contrary to the settled legal position and liable to be set aside. It was submitted that the Adjudicating Authority had failed to apply the principles governing the existence of a pre-existing dispute under Section 9 of the Code, had disregarded material evidence already placed on record and had

improperly proceeded to assess the legitimacy of the Operational Creditor's claim. The Appellant maintained that the application filed by the Operational Creditor ought not to have been admitted in the presence of the documented and unresolved contractual disputes.

25. Concluding the arguments, the Appellant requested this Appellate Tribunal to set aside the Impugned and allow the present Appeal.

26. The Respondent No.1, the contesting Respondent stated that since his disputes and claims have been resolved with the Appellant, he leave it to the Appellate Tribunal to dispose the Appeal.

Findings

27. We have already recorded submission above. We note that the claim was for Rs. 2,18,03,319/-. It is made up of three invoices raised under a Technology Transfer Agreement dated 04.05.2022 ("the TTA"):

Invoice No.	**Date**	**Subject**	**Amount (Rs.)**
IMSER/22-23/0089	22.02.2023	Third-party laboratory testing charges	20,38,319
IMSER/24-25/0006	09.04.2024	Second milestone (3-month stability data)	98,82,500
IMSER/24-25/0007	09.04.2024	Third milestone (6-month stability data)	98,82,500
Total			**2,18,03,319**

28. Based on submission of the parties, we find that the appeal turns on one question: was there a dispute between the parties, in fact, before the demand notice dated 22.10.2024? If there was, Section 9(5)(ii)(d) of the Code leaves the Adjudicating Authority no choice but to reject the application, and nothing else in the appeal needs to be decided. We therefore confine ourselves to this question.

29. The Appellant submitted that the Corporate Debtor disputed each of the three invoices in writing, by e-mails of July 2023, December 2023, January 2024 and August 2024, all of which came before the demand notice. The Appellant submitted that the testing charges were outside the scope of the Operational Creditor's work under Clauses 4.3 and 4.7 of the TTA, that the milestone payments were not due because the stability data was late, incomplete or missing, and that the out-of-specification results were not properly investigated. The Appellant submitted that the Adjudicating Authority, having found that pre-existing disputes existed, was bound to reject the application.

30. We note that under Section 8(2)(a), the corporate debtor must, within ten days of the demand notice, bring to the notice of the operational creditor the existence of a dispute, if any. Under Section 9(5)(ii)(d), the Adjudicating Authority must reject the application if a notice of dispute has been received. Section 5(6) defines "dispute" widely. It includes a dispute about the existence of the amount of the debt, the quality of goods or service, and breach of a representation or warranty.

31. We will refer to ratio laid down by the Supreme Court in ***Mobilox Innovations Private Limited v. Kirusa Software Private Limited*****,** (2018) 1 SCC 353,where it was stipulated that the Adjudicating Authority has to see whether there is a debt above the threshold, whether it is due and unpaid, and whether a dispute existed before the demand notice. If a dispute existed, the application has to be rejected. On the nature of the dispute the Hon'ble Supreme Court said:

> *"...all that the adjudicating authority is to see at this stage is whether there is a plausible contention which requires further investigation and that the 'dispute' is not a patently feeble legal argument or an assertion of fact unsupported by evidence."*

32. The Hon'ble Supreme Court added that the defence need not be likely to succeed, and that so long as the dispute truly exists in fact and is not spurious, hypothetical or illusory, the application must be rejected.

33. We note that the Hon'ble Supreme Court has repeated this in later cases. In ***S.S. Engineers v. Hindustan Petroleum Corporation Limited & Ors.*****,** Civil Appeal No. 4583 of 2022, it held that the Adjudicating Authority had made a grave error of law in admitting an application although it had itself noted a pre-existing dispute. In ***Rajratan Babulal Agarwal v. Solartex India Pvt. Ltd. & Ors.*****,** Civil Appeal No. 2199 of 2021, it held that the standard for a pre-existing dispute cannot be equated even with the preponderance of probability that guides a civil court at the time of decree, and that an e-mail sent before the demand notice has to be taken into account in deciding whether a dispute existed. In ***GLS Films***

Industries Private Limited v. Chemical Suppliers India Private Limited, Civil Appeal No. 4019 of 2025, (2026 INSC 344), the Hon'ble Supreme Court set aside an order of this Appellate Tribunal and restored the rejection of a Section 9 application, because the material showed disputes that came before the demand notice, and the merits of the dispute were not to be gone into.

34. From these decisions, we find that four things are clear. First, the question is whether a dispute existed in fact before the demand notice, and not whether the corporate debtor will win on it. Second, the dispute must be real, and not spurious, hypothetical or illusory, nor an argument that is plainly weak or has nothing to support it. Third, the standard of proof is low, lower than preponderance of probability. Fourth, once such a dispute is found, the application must be rejected. The Adjudicating Authority has no discretion to admit it on the view that the dispute is minor.

35. We state that the reason for this limited inquiry lies in the scheme of the Code. A demand notice under Section 8 gives the corporate debtor a short and fixed window to say that the debt is disputed. If it does so, the operational creditor cannot use the Code to collect the money, and has to go to the forum where the dispute can be decided on evidence. The Adjudicating Authority is not meant to hold a trial at the admission stage. It reads the material to see whether a genuine dispute is there, and goes no further.

36. We also record that the word "pre-existing" fixes the point of time. The dispute must have existed before the demand notice was received. What the

corporate debtor says in its reply is relevant, but only as evidence of what it had already been saying. A dispute which first appears after the notice, or which has no document or conduct behind it, will not do. On the other hand, a dispute does not have to be raised in a particular form. It need not be a suit, an arbitration or a formal notice. Letters and e-mails or were whatsapp messages written in the ordinary course of the contract are enough if they show that the debtor was contesting the claim.

37. We note that the demand notice under Section 8 has been sent by Respondent No.1 to the Appellant on 23.10.2024 which was replied by the on 31.10.2024, disputing all three invoices claimed by the Respondent No.1. In this connection, the Appellant brought to our notice various communication made by the Appellant to Respondent No.1 much prior to Demand Notice, which indicate pre – existing dispute. We note that Appellant sent email on 21.7.2023, 26.12.2023, 17.01.2024, 06.08.2024, 09.08.2024 to the Respondent No.1. Based on above communication, we are of view that these were for existing dispute between Appellant and Respondent No.1 and therefore the Adjudicating Authority erred in allowing Section 9 of Respondent No.1 and putting, the Corporate Debtor into CIRP. We hold that a plausible dispute existed before the demand notice. The reply of 31.10.2024 was given within ten days of the demand notice and set out the dispute invoice by invoice. We may add that the Operational Creditor has not placed before us any e-mail, certificate or other document in which the Corporate Debtor accepted that the claims of the Respondent No.1.

38. We have considered the contentions recorded in the Impugned Order and those made before us. None of them takes away from the finding above.

(a) That the Corporate Debtor never disputed the invoices. The record shows otherwise. The e-mails of 21.07.2023 and 26.12.2023 dispute the first invoice by name and number. The e-mails of 26.12.2023, 17.01.2024, 06.08.2024 and 09.08.2024 question the very performance on which the milestone invoices rest.

(b) That the e-mail of 26.12.2023 shows willingness to pay. That e-mail offers to consider payment after the product is approved, and says the Corporate Debtor will "settle down although amicably". In the same message it says that the testing was the Operational Creditor's responsibility and that the 6-month data had not been received. An offer made to settle a disagreement, tied to a future event and made together with a statement of grievance, is not an admission of liability. If anything, the need to settle shows that there was something to settle. The Impugned Order also does not rest on any acknowledgment of debt.

(c) That the TTA has no liquidated damages for delay, and delay by itself is no defence. This answers a case that the Corporate Debtor does not make. It does not claim damages for delay. It says the conditions for payment of the milestones were not met. That is a dispute about whether the debt exists.

(d) That the Corporate Debtor did not file a suit or begin arbitration before the notice. ***Mobilox (supra)*** holds that a suit or arbitration is not needed. It is enough that a dispute exists, and the word "and" in Section 8(2)(a) is read as "or". It is also not necessary that the Corporate Debtor first go through the escalation

process in Clause 9.1. A dispute can exist whether or not the contract's machinery for resolving it has been used.

(f) That the insolvency of Akorn Pharmaceuticals in the United States does not excuse non-payment. We need not decide whether this is a defence. The Adjudicating Authority was right that a third party's bankruptcy does not by itself relieve the Corporate Debtor of its duties under the contract. But a weak or additional defence does not take away the separate dispute, based on the TTA and the correspondence of 2023 and 2024, on which we have based our finding.

39. The Adjudicating Authority recorded that there were pre-existing disputes. It then held that they were not significant enough to take away from the "legitimate claim", that the Corporate Debtor's reply did not contain any "convincing" pre-existing dispute, that the TTA has no damages for delay, that the debt "is proved", and that the claim is above Rs. 1 crore. This reasoning cannot be sustained, for four reasons.

(a) Having found that pre-existing disputes existed, the Adjudicating Authority had to reject the application under Section 9(5)(ii)(d). The Code does not let it admit the application on the view that the dispute is not significant. The test is whether the dispute is plausible. It is not whether it is significant. The Hon'ble Supreme Court corrected the same error in *S.S. Engineers (supra)*.

(b) A requirement that the dispute be "convincing" brings in a standard of persuasion. ***Rajratan (supra)*** submitted that even preponderance of probability is

too high a standard, and ***Mobilox (supra)*** says the defence need not be likely to succeed.

(c) The findings that the TTA has no damages for delay and that the debt "is proved" are conclusions on the merits. Under ***Mobilox*** **and** ***GLS Films*** **(supra)** these are not for the Section 9 inquiry. The Adjudicating Authority also treated the dispute as one about delay alone. It did not look at the payment conditions, the 6-month data, the OOS results or the clauses on third-party procurement. The Impugned Order does not discuss any of the e-mails of 2023 and 2024.

(d) The Adjudicating Authority observed that even if the testing charges are disputed, the other two invoices are above the threshold. That assumes the milestone invoices are not disputed. We have held that they are.

40. In short, we are of view that the Adjudicating Authority applied a test of significance and conviction in place of the test of plausible dispute, and decided questions of merit which a Section 9 inquiry does not permit. The approach of the Adjudicating Authority is the one that the Hon'ble Supreme Court has disapproved. In ***S.S. Engineers*** **(supra)** an application was admitted although the Adjudicating Authority had noted a pre-existing dispute, and the Hon'ble Supreme Court held this to be a grave error. In ***Rajratan*** **(supra),** an e-mail sent before the demand notice was enough to show a dispute, even though the reply to the demand notice had not mentioned it. In the present case we note that the reply does refer to the earlier correspondence and to the clauses of the contract. In *GLS Films* (supra), the Hon'ble Supreme Court set aside an order of this Appellate

Tribunal because it looked into the merits of the dispute, when all that was needed was a plausible dispute that existed before the notice. We are bound by that decision. We would be going against it if we upheld the Impugned Order on the view that the Operational Creditor's answers to the Corporate Debtor's objections are stronger.

41. We would like to reiterate that the Code is a law for the resolution of insolvency. It is not a law for recovery of money. An operational creditor with a genuinely contested claim has the ordinary remedies of a civil suit or, as here, arbitration, where evidence can be led and the contract construed after cross-examination. We are of considered view that admission of a Section 9 application has serious and immediate effects. The management is displaced, a moratorium stops all legal proceedings, the affairs of the company pass to a professional, and employees, suppliers and other creditors are affected, whatever the merits of the claim. These effects should not follow from a claim that the debtor disputes in good faith on documents.

42. We hold that since the application was liable to be rejected under Section 9(5)(ii)(d), the CIRP started on it, and what followed from it, cannot stand. The Corporate Debtor must be restored to its management with immediate effect, and the IRP must be relieved.

43. At this stage, we would reiterate that the Respondent No.1 fairly conceded that the Respondent No.1 he does not want to contest as all disputes have been settled with the Appellant.

44. We note that the Respondent No.1, who initiated original Section 9 has submitted that all disputes and claims between for Appellant and Respondent No.1 have been reserved in toto. The Respondent No.1 also fairly conceded that he has no objection if the appeal is suitably disposed by this Appellate Tribunal.

45. In this connection, we reproduce the Respondent No.1 affidavit in compliance to our order dated 22.09.2026 which reads as under:

AFFIDAVIT ON BEHALF OF THE RESPONDENT NO. 1 IN COMPLIANCE OF THE ORDER DATED 22.09.2026 PASSED BY THIS HON'BLE APPELLATE TRIBUNAL.

I, Mr. Viral Shah, son of Dilip Kumar Bhogilal Shah, aged about 49 years, resident of House No 539, Sector 18 B, Chandigarh 160018, being the Authorized Signatory of *Immacule Lifesciences Private Limited*, the Respondent No. 1 in the present Appeal, duly authorized vide Board Resolution dated 10.09.2026, presently at Nalagarh, Himachal Pradesh, do hereby solemnly affirm and state as under:

1. That, the present Affidavit is been filed in accordance to the directions passed by this Hon'ble Appellate Tribunal vide order dated 22.09.2026 including oral directions passed during the hearing in the above captioned matter.

2. That, the Respondent No.1 is the original applicant in the Company Application bearing CP IB No. 346 of 2026 ("**Company Petition**") filed before the Hon'ble National Company Law Tribunal, Ahmedabad ("**NCLT**") under the Section 9 of the Insolvency and Bankruptcy, Code, 2016 ("**Code**") vide order dated 09.09.2026 ("**CIRP Order**"), the said Company Petition was admitted by the NCLT and the Respondent No.2 was appointed as the Interim Resolution Professional ("**IRP**").

3. Thereafter, the present Appeal challenging the above CIRP was filed by the Appellant challenging the findings and observations of the Hon'ble NCLT, namely, Para 10 (b) and reliance on the ignorance of settled law of rejection of Section 9 application on the pretext of pre-existing dispute. That the Para 10 (b) of the CIRP order is set out hereunder:

> *"b) The parties to the contract is independent based on which the petitioner has performed the obligations claiming the dues for the second- and third-mile stone.* ***There appears to be some delay pointed out but apparently the pre-existing disputes are not significant to erode the legitimate claim to be made by the applicant****. Filing of this application is within the period allowed under limitation."*



Further, it is submitted that the said Appeal as filed by the Appellant, places a reliance on the documents and, inter-alia, emails dated 26.12.2023, 21.07.2023,17.01.20224, 06.08.2024 & 09.08.2024 depicting disputes amongst the parties with respect to the purported invoices, concerned Technology Transfer Agreement and rely upon

on the ground that aforesaid emails are prior to demand notice and demonstrate pre-existing dispute sufficiently.

4. That, in view of the above, I the Deponent, hereby with prejudice to, submit that to an extent of the averments of the Appellant as relied herein under para 2 and 3 of the Affidavit, the Deponent has no objection as all the disputes and claims between the parties are now resolved in toto. Moreover, the aforesaid emails relied by the Appellants are matter of fact and do not require any specific rebuttal. Therefore, in terms of this Affidavit, this Hon'ble Appellate Tribunal may pass the necessary directions, as may be deem fit.

5. The present Appeal is in best interest of justice and bonafide.

46. Thus, we find that effectively there is no contesting Respondent and parties have agreed to close the matter.

47. To summarise, we would record that a plausible dispute, not spurious, hypothetical or illusory, existed before the demand notice dated 22.10.2024 on each of the three invoices, supported by dated correspondence and the terms of the TTA. We also state that the Impugned Order applied a wrong test of significance and conviction, decided matters of merit and did not examine the correspondence. No part of the claim is undisputed and above the threshold of Rs. 1 crore. The application under Section 9 had to be rejected under Section 9(5)(ii)(d), and no remand is needed.

48. In view of above detailed discussion the appeal succeed and the Impugned Order dated 09.09.2026 is set aside. The CIRP of FTF Pharma Private Limited is closed. The moratorium under Section 14 ceases. Mr. Sunil Kumar Kedia IRP

stand discharged. The Corporate Debtor is released from the CIRP, and the powers of its Board of Directors and management are restored with immediate effect. The IRP shall hand over all assets, books, records and documents of the Corporate Debtor in his possession to the Board of Directors immediately. The fees of the IRP for the period 09.09.2026 to the date of this judgment with out-of-pocket expenses actually incurred and supported by vouchers need to be paid by the Corporate Debtor within fifteen days from the date of this judgment. The sum of Rs. 2,00,000/- that the Operational Creditor was directed to pay to the IRP under the Impugned Order, if actually paid, shall be adjusted against the amount due to the IRP, and the Corporate Debtor shall reimburse the Operational Creditor to that extent within the same period. No order to cost. I.A., if any stand closed.

[Justice Mohammad Faiz Alam Khan]
Member (Judicial)

[Naresh Salecha]
Member (Technical)

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