Rakesh Dalpatram Panchal vs Kisaan Steels Private Limited & Anr & Ors on 11 May, 2026

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI
Company Appeal (AT) (Insolvency) No. 526 of 2025
[Arising out of the Order dated 24.03.2025, passed by the 'Adjudicating Authority' (National Company Law Tribunal, Mumbai Bench in CP (IB) No. 176(MB)/C-V/2024)]

IN THE MATTER OF:
Rakesh Dalpatram Panchal
S/o Dalpatram Jethalal Panchal,
Residing at 1102, Estonia A, Hiranandani Heritage,
S. V. Road, Poisar Bridge,
Poidar Bus Depot, Kandivali (W),
Mumbai - 400 067 ...Appellant

Versus

1. M/s. Kisaan Steels Pvt. Ltd.
Having its registered address at
B-12, Industrial Area Bulandshahar Road
Ghaziabad, UP- 201001 ...Respondent No.1

2. Mr. Pankaj Govindlal Khadloya
Having registration No. IBBVIPA-001/IP-P-02485/2021-2022/13810,
R/o 202 Vishnu Sadashiv Apartment,
1754 Sadashiv Peth, Near Udayan Mangal Karyalay Opp Scout Ground,
Pune, Maharashtra - 411030 ...Respondent No.2

Present:
For Appellant : Mr. Gopal Jain, Sr. Adv. with Mr. Mahesh Agarwal, Mr. Ankur Saigal, Mr. Shivam Shukla and Mr. Pranav Saigal, Advocates.
For Respondent : Mr. Ashish Mohan, Sr. Adv. with Mr. Shreshth Jain, Mr. Auritro Mukherjee, Mr. Nitish Thakral and Ms. Neha Buttan, Advocates for R1
Ms. Riddhivora and Ms. Bharti N., Advocates for R2

JUDGMENT

(Hybrid Mode) [Per: Arun Baroka, Member (Technical)] This is an appeal filed by Rakesh Dalpatram Panchal who is the Ex- Director of M/s Gemini Engi. Fab. Private Limited - the Corporate Debtor against admission of Section 9 application, which was filed by Respondent No.1 - Kisaan Steels Pvt. Ltd. The Corporate Debtor - M/s Gemini Engi. Fab. Private Limited and Respondent No.1 - Kisaan Steels Pvt. Ltd. had entered into several purchase orders between December 2021 and June 2022 for the supply of forgings and other materials. It is claimed by the Appellant that R1 failed to adhere to the agreed delivery timelines and supplied defective goods, which led to multiple disputes between the parties. Numerous correspondences were exchanged between the parties which shows pre-existing dispute regarding quality, penalties and financial reconciliation. Appellant - Corporate Debtor had also imposed penalties on R1 for its breaches and

reconciliation of accounts was going on. Respondent No.1 - Kisaan Steels Pvt. Ltd. had issued a demand notice under Rule 5 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 claiming an outstanding amount of Rs.6,13,53,270/-. Appellant - Corporate Debtor in its rely on 14.07.2023, denied the liability and cited existence of pre-existing dispute and defective supplies. But despite this evidence of ongoing disputes NCLT admitted under Section 9 application relying on an email dated 01.11.2023, which was misinterpreted as an admission of liability, whereas it was conditional upon the acceptance of the consequences sheet.

Submissions of Appellant

2. Between June 2021 to December 2021, the Appellant - Corporate Debtor placed several Purchase Orders ("PO") for delivery of Tube sheets and Forgings to be delivered within the timeline stipulated in such POs. Notwithstanding the aforesaid, and more particularly the fact that time was of the essence under the POs, Respondent No.1 - Kisaan Steels Pvt. Ltd. failed and neglected to supply Company Appeal (AT) (Insolvency) No. 526 of 2025 2 of 39 the goods within the stipulated timeline. Accordingly, supply by the Appellant - Corporate Debtor to the end-user/ customer suffered massive delays which affected completion of equipment and end-user's project and occasioned commercial loss and injury to the Corporate Debtor. Respondent No. 1 has also acknowledged delay in supply of goods as per contractual timeline vide letter dated 16th May 2017.

3. Such delays were not isolated incidents, but rather a recurring pattern across multiple purchase orders. Respondent No. 1 not only failed to respond to reminders addressed by the Corporate Debtor but miserably failed to meet the agreed timelines, demonstrating a persistent and negligent approach towards its contractual obligations. Due to Respondent No. 1's inaction, the Corporate Debtor was compelled to incur extra costs towards workforce, contractors, and bank interest. This was repeatedly informed to Respondent No. 1, however, Respondent No.1 failed to deliver the goods within the stipulated timeline. Respondent No. 1's failure to comply with the agreed delivery timelines has been duly established through a consistent chain of correspondence, including its own admissions of delay, and contemporaneous communications demonstrating the direct financial and operational impact suffered by the Corporate Debtor. The said delays not only caused severe disruption in the project schedule but also led to reputational and monetary losses to the Corporate Debtor in its dealings with IOCL and other clients.

4. The Corporate Debtor had raised concerns with respect to defects in the goods supplied by Respondent No. 1 on several occasions. In fact, the Corporate Company Appeal (AT) (Insolvency) No. 526 of 2025 3 of 39 Debtor even shared with Respondent No. 1, the communications received by the end-user inter alia highlighting deficiencies in the goods supplied. However, Respondent No. 1 failed to rectify such defects, thereby placing the Respondent in major financial distress. In fact, the Petitioner has acknowledged existence of disputes between parties owing to initiation of pre-mediation proceedings before the District LEGAL Services, authority, Civil Court, compound, Surajpur, District, Gautam Budh Nagar, Delhi.

5. Prior to the issuance of the Demand Notice under Section 8 of the Code, the Corporate Debtor had intimated Respondent No. 1 on more than one occasion as to the existence of disputes between the

parties.

6. These disputes were raised by the Corporate Debtor on account of delay in supply and defective goods. Respondent No. 1 had also initiated proceedings under the Commercial Courts Act, 2015 prior to filing the Company Petition, which evidences pre-existing disputes between the parties. Perusal of paragraph 28 of the Reply filed by Respondent No. 1 to the present Appeal itself reveals allegations and counter allegations and pre-existing disputes between the parties.

7. NCLAT in the matter of Praveen Kumar Sharma v. Arcee Trading Corporation & Anr. [NCLAT Comp Appeal No. 213 of 2020 @Para 13] has held that when there are clear documents raising disputes, it is not appropriate for the Adjudicating Authority to enter into procedure in Trial of Civil Suit. It is a matter which would require adjudication before the appropriate Court. It was Company Appeal (AT) (Insolvency) No. 526 of 2025 4 of 39 further held that nature of proceedings under Section 9 of Code are summary and disputed questions of facts already raised before Notice under Section 8 of the Code, cannot be investigated.

8. It has been held by the Hon'ble Supreme Court of India that there are noticeable differences in the Code between the procedure of initiation of CIRP by a Financial Creditor and initiation of CIRP by an Operational Creditor. On a reading of Sections 8 and 9 of the Code, it is patently clear that an Operational Creditor can only trigger the CIRP process, when there is an undisputed debt and a default in payment thereof. If the debt is disputed, the application of the Operational Creditor for initiation of CIRP must be dismissed. M/s S.S. Engineers v. Hindustan Petroleum Corporation Ltd. & Ors - Supreme Court

- Civil Appeal No. 4583 of 2022 dated 15th July 2022 @ Paras 16, 30, 31 &

321.

9. NCLT, exercising powers under Section 7 or Section 9 of the Code, is not a debt collection forum. The Code tackles and/or deals with insolvency and bankruptcy. It is not the object of the Code that CIRP should be initiated to penalize solvent companies for non-payment of disputed dues claimed by an operational creditor. M/s S.S. Engineers v. Hindustan Petroleum Corporation Ltd. & Ors - Supreme Court-Civil Appeal No. 4583 of 2022 dated 15th July 2022@ Paras 16, 30, 31 & 32].

10. Appellant - Corporate Debtor had categorically disputed the quantum of debt claimed by Respondent No. 1 and the disputes raised are neither Company Appeal (AT) (Insolvency) No. 526 of 2025 5 of 39 hypothetical, spurious or illusionary. Therefore, considering that the Corporate Debtor has intimated Respondent No. 1 of pre-existing disputes, prior to issuance of the demand notice, the Impugned Order ought to be set aside and the Corporate Debtor be released from the rigors of CIRP.

11. The appellant has placed its reliance on the judgment of Mobilox Innovations Private Limited v. Kirusa Software Private Limited, [(2018) 1 SCC 352 @Para 33, 34 & 51]; Sabarmati Gas Limited v. Shah Alloys Limited [(2023) 3 SCC 229 @ Para B, C, D, 38-40] and Innoventive Industries Ltd. v ICICI Bank and Anr. (2018) 1 SCC 407-para 29-"The moment there is existence of such a dispute,

the operational creditor gets out of the clutches of the Code"

12. Respondent No. 1 has not placed any material on record whereby the Appellant - Corporate Debtor can be said to have unambiguously admitted the operational debt claimed. The Corporate Debtor's communications clearly indicate an intention to settle the matter, but this intention is conditional upon the proper reconciliation of accounts. In the absence of such reconciliation, it would be inappropriate to conclude that the debt is undisputed or that the Corporate Debtor is liable for the amount claimed by Respondent No. 1. In fact, the Corporate Debtor has, on multiple occasions, more particularly vide its communications dated 11.03.2023 and even during the meeting held on 02.03.2023, questioned the amounts claimed on the basis that the same needed to be cross-checked/ verified. It was made clear to Respondent No. 1 that Company Appeal (AT) (Insolvency) No. 526 of 2025 6 of 39 payments were always subject to reconciliation of accounts by the Corporate Debtor.

13. In accounting, reconciliation is the process of ensuring that two sets of records are in agreement. It has been held by the Hon'ble NCLAT in the matter of Amit Wadhwani v. M/s Global Advertisers & Anr. [NCLAT Comp Appeal No. 616 of 2021 @ Paras 14-16] and East India Udyog Ltd. v. SPML Infra Limited /NCLAT, Comp Appeal No. 256 of 2023 @ Para 12] that in absence of reconciliation of accounts, it can be inferred that there was pre-existing dispute between the parties.

14. Adjudicating Authority has itself held at paragraphs 29, 30, 31, 32, 35 and 37 of the Impugned Order as follows:

> "29. With regard to quality of goods the following communications are particularly relevant:
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> 30. With regard to delays in delivery, the following communications are noteworthy:
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> 31. Additionally, the Corporate Debtor has also produced evidence of a "consequences sheet" shared with the Operational Creditor during a meeting on 02.03.2023, detailing the financial implications of the delays and defects, which the Operational Creditor was required to accept before any further payments could be made.
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> 32. These communications clearly establish that there were ongoing disputes between the parties regarding the quality of goods and delays in delivery, which directly impact the quantum of the operational debt claimed by the Operational Creditor.
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> 35. In the present case, the disputes raised by the Corporate Debtor regarding the quality of goods and delays in delivery are supported by documentary evidence, including communications with the end-

user/customer and acknowledgements by the Operational Creditor itself.

Company Appeal (AT) (Insolvency) No. 526 of 2025 7 of 39 These disputes cannot be characterized as spurious, hypothetical, or illusionary.

37. In the present case, the disputes regarding quality and delays clearly existed before the issuance of demand notice on 15.03.2023, as evidenced by the communications dated 21.11.2022, 25.01.2023, and the "consequences sheet" shared on 02.03.2023."

15. Once the NCLT had already arrived at a finding that the disputes raised by the Corporate Debtor were not spurious, hypothetical or illusionary, the Company Petition ought not to have been admitted.

16. In the aforesaid circumstances, it is clear that:

a. A pre-existing dispute exists between parties.

b. The Corporate Debtor had raised a more than plausible contention requiring further investigation.

c. The contention is neither a patently feeble legal argument nor an assertion of facts unsupported by evidence.

d. Thus, this Petition ought to be dismissed in terms of Section 9(5)(ii)(d) of the Code.

17. Rule 6(1) of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 ("said Rules") read with Form 5 mandates that a Petition filed under Section 9 of the Code be filed by the Operational Creditor or person authorized to act on behalf of the Operational Creditor. Similarly, Rule 23(2) read with Rule 26 of the National Company Law Tribunal Rules, 2016 requires a Petition/ Application to be filed and signed/ verified by an "Authorized Representative of the Applicant. Such an "Authorization" would necessarily mean a specific authorization by the Board of Directors of such Operational Creditor to initiate CIRP of a Corporate Debtor. [Refer Shantilal Khushaldas Company Appeal (AT) (Insolvency) No. 526 of 2025 8 of 39 and Brothers Pvt. Ltd v. Smt. Chandanbala Sughir Shah & Anr. 1992 SCC OnLine Bom 83 (Para 31, 33); Palogix Infrastructure Pvt Ltd. vs ICICI Bank Ltd. 2017 SCC Online NCLAT 266 (Para 36, 45); Rajendra Narottamdas Sheth & Anr. V. Chandra Prakash Jain and Another (2022) 5 SCC 600 (Para

14); M Sai Eswara Swamy v. Siti Vision Digital Media Pvt. Ltd. [NCLAT Comp Appeal No. 706 of 2021] (Para 6)].

18. In the present case, the NCLT has failed to appreciate that the signatory of Respondent No. 1 was not authorized to file the Company Petition for initiation of CIRP of the Corporate Debtor. NCLT failed to consider that the board resolution annexed at page 22 of the Company Petition (Pg. 22 of the Petition) authorized Mr. Arobinda Mookherjee to take legal action against one M/s Gemini Steels Private Limited and not the Corporate Debtor. On this ground alone, the Impugned Order

ought to be set aside.

19. Respondent No.1 has deliberately suppressed all communications exchanged evidencing pre-existing disputes between the parties. The Hon'ble Supreme Court of India in the matter of Dalip Singh v. State of Uttar Pradesh & Others [(2010) 2 SCC 114, para 2 has categorically held that "if a litigant attempt to pollute the stream of justice or who touches the pure fountain of justice with tainted hands, is not entitled to any relief, interim or final".

20. In the present case, Respondent No.1 was obligated to disclose all documents and information relevant to the case. However, a perusal of the pleadings clearly evinces that Respondent No. 1 had filed the Company Petition Company Appeal (AT) (Insolvency) No. 526 of 2025 9 of 39 by willfully suppressing material facts and documents evidencing pre-existing disputes between parties. Therefore, on this ground alone, the Impugned Order ought to be set aside.

21. The Code is not legislated for recovery of outstanding debt and operational creditors cannot use the Code either prematurely or for extraneous considerations or as a substitute for debt enforcement procedures. Therefore, Respondent No.1 by invoking provisions of the Code, is not entitled to take advantage of its own wrong (Amar Singh v. Union of India & Ors. (2011) 7 SCC 69 @ Para 53-61; NCC Limited v. Sembcorp Gayatri Power & Anr. (2017 SCC Online Hyd 881 @ Para 143-1471.

22. The NCLT has erred in admitting the Company Petition on the erroneous ground that the Corporate Debtor has admitted debt in its email dated 1st November 2023. A document must be interpreted in the context of the surrounding circumstances. In this regard, while the NCLT has relied upon the email dated 1st November 2023, wherein the Corporate Debtor stated its intention to pay the balance amount, the NCLT has failed to recognize that the same email explicitly refers to the pre-existing disputes between the parties. Furthermore, the NCLT has overlooked the fact that the Corporate Debtor's agreement to make the payment was contingent upon the acceptance of and adherence to the consequences sheet shared with the officers of Respondent No.1. Clearly, the NCLT has not fully considered the contents of the email dated Company Appeal (AT) (Insolvency) No. 526 of 2025 10 of 39 1st November 2023 in its entirety, which is essential to understanding the actual context and intention behind the Corporate Debtor's statement.

23. The NCLT was not justified in isolating a single sentence from the email dated 1st November 2023 and interpreting it in a manner that disregards the remainder of the document. The remaining content of the email clearly demonstrates that there was an ongoing dispute between the parties, which should have been duly considered in the NCLT's assessment. The mere fact that the Corporate Debtor mentioned it would make payment of the balance amount does not necessarily imply that the amount claimed by Respondent No. 1 became due. Even assuming, without admitting, that the Corporate Debtor acknowledged that the amount claimed by Respondent No. 1 was due and payable, such acknowledgment was explicitly conditional, as it was subject to the acceptance of the consequences sheet. As such, this cannot be interpreted as an unequivocal admission of liability on the part of the Corporate Debtor. The same had been previously communicated to the Respondent No.1. [Refer to Bank of Baroda vs. Shree Sainath Surgical Dressing Mfg. Co. Pvt. Ltd. & Ors. Gujarat High Court, 2005 SCC OnLine Guj 169 @ Para 14 and 15].

24. It is the case of Respondent No. 1 that goods were supplied to the Corporate Debtor after receiving due approval from an independent agency which inspected the quality of goods before dispatch. Respondent No. 1 has also sought to annex Work Test Certificates. In this regard, it is pertinent to highlight that such inspection was carried out solely on the basis of documents and Company Appeal (AT) (Insolvency) No. 526 of 2025 11 of 39 procedures demonstrated by Respondent No. 1. Subsequent to the delivery and receipt of the goods, a joint Ultrasonic Test (UT Test) was conducted at site by the Corporate Debtor and the end user. During this joint inspection, goods were found defective. This was promptly communicated to Respondent No. 1 vide email dated 23rd November 2022, and a re-testing was conducted in the presence of representatives from the end user and Corporate Debtor. The goods again failed the UT test during this joint inspection. This raises serious concerns about the reliability and integrity of the initial inspection process carried out at Respondent No. 1's works. Inspection by any third-party agency does not absolve the original manufacturer Le. Respondent No. 1 from their primary responsibility of ensuring the quality and integrity of the goods. Despite being notified of these defects, Respondent No. 1 neither rectified the defective goods nor replaced the same with compliant material.

25. The Appellant respectfully submits that the reliance placed by the Respondent No. 1 on the deduction of TDS or reference to GST as evidence of the Corporate Debtor's acknowledgment of debt is wholly misconceived. It is a settled principle that statutory deductions such as TDS and GST are carried out in compliance with fiscal obligations and cannot, by themselves, be construed as admission of any financial liability. The deduction or payment of TDS is under the Income Tax Act, 1961, imposed on certain categories of transactions. Such deduction is mandatory and is made irrespective of the status of the underlying liability whether admitted, disputed, or even partially settled. Hence, the act of deducting TDS, even assuming it took place, is not a voluntary or conscious act Company Appeal (AT) (Insolvency) No. 526 of 2025 12 of 39 of acknowledgment of debt, but merely compliance with statutory tax withholding requirements. The function of TDS is limited to the collection of income tax at source and does not reflect any admission of the amount due or the existence of an enforceable financial obligation. There is no element of consent or agreement in TDS deductions that would give rise to a legal inference of liability. It is an administrative act and not a contractual or evidentiary acknowledgment.

26. Similarly, any reference to GST, including issuance of invoices that carry GST or any payments made toward GST liabilities, are regulatory compliances under the Goods and Services Tax law and are intended only to ensure correct reporting and collection of indirect taxes. It is well established that the filing of GSTR-1 returns is a statutory requirement under the CGST Act and does not constitute an admission of liability or acknowledgment of a jural relationship between the parties.

27. The presence of GST in documentation or accounting entries does not imply acceptance of liability towards the recipient of such services or goods. GST is charged and collected by law, and its inclusion cannot be construed as a voluntary acceptance or admission of any due or outstanding amount.

28. Respondent No. 1 has failed to produce any clear acknowledgment of liability on the part of the Corporate Debtor. The reliance placed on internal accounting records, invoices, or statutory returns

cannot override the actual communications between the parties which reflect unresolved disputes and Company Appeal (AT) (Insolvency) No. 526 of 2025 13 of 39 conditional communications. Therefore, the reliance placed by the Respondent No.1 on tax compliance actions such as deduction of TDS or payment of GST to assert acknowledgement of liability is misplaced and cannot form the basis for establishing either the existence of debt or default on the part of the Appellant. Submissions of Respondent

29. The Corporate Debtor approached the Respondent No.1 in November 2021 for purchase of different categories of Steel Forgings. After considering, the reputation and assurance of repeat orders, the Respondent No.1 agreed to supply the goods to the Corporate Debtor. The Respondent No.1 supplied goods to the Corporate Debtor, as and when demand was raised by the Corporate Debtor. The goods ordered by the Corporate Debtor from the Respondent No.1 were Tubesheets, Forgings, Test Ring, Test Flange, Body Flange, Backing ring, Cover, nozzle of different specifications, Channel Flange and other materials.

30. The Corporate Debtor issued the following Purchase orders for various Steel forgings, the details of the same are mentioned herein below: -

S. No.	Particulars	Purchase Order No.	Purchase Order Date	Amount (including GST)
1	Tubesheet	GEF/PO/079/22-	10.06.2022	Rs.4,83,800/-
2.	Forgings	GEF/PO/053/22-	09.06.2022	Rs.21,35,799/-
3.	Forgings	GEF/PO/326/21-	08.12.2021	Rs.5,86,03,983/-
4.	Forgings	GEF/PO/004/22-	04.04.2022	Rs.19,47,003/-
5.	Forgings	GEF/PO/343/21-	22.12.2021	Rs.7,434/-

6.	Forgings	GEF/PO/005/22-	04.04.2022	Rs.2,08,23,394/-

31. The total amount of purchase orders issued by the Corporate Debtor were to the tune of Rs. 8,40,01,413/- (Rupees Eight Crore Forty Lacs One Thousand Four Hundred Thirteen Only). All the goods were delivered to the Corporate Debtor at the assured time and all the goods were duly accepted by the Corporate Debtor against proper acknowledgement of the invoices. The Corporate Debtor never returned any goods or raised any complaint against the goods supplied to them by the Respondent No.1.

32. As soon as the goods were ready for dispatch, the goods were inspected by an agency duly appointed by the Corporate Debtor itself. Upon receiving the approval for the quality of the goods from the duly appointed testing agency of the Corporate Debtor, the goods were delivered by the Respondent No.1 to the desired address of the Corporate Debtor. Respondent No.1 issued various Invoices against each purchase order issued by the Corporate Debtor. The details of the invoices are mentioned herein below: -

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33. Respondent No.1 duly abided by the terms of the contract between the parties, however, the Corporate Debtor miserably failed to fulfill their obligation to pay the admitted balance outstanding amount of Rs. 6,13,53,270.70/- (Rupees Six Crore Thirteen Lacs Fifty-Three Thousand Two Hundred Seventy and Seventy Paisa Only). The Respondent No. 1 deposited GST on the invoices, raised by them, and the Corporate Debtor also filed TDS on all the invoices raised by the Respondent No.1 as per the Income Tax Act. The Corporate Debtor further Company Appeal (AT) (Insolvency) No. 526 of 2025 16 of 39 took the input of the GST deposited by the Respondent no.1 on the GST number of the Corporate Debtor on the GST Portal. TDS deposited by the Corporate Debtor is an absolute admission of debt on the part of the Corporate Debtor. Further, non-reversal by the Corporate debtor of the GST deposited by the Operational Creditor is again an admission of debt of Rs. 6,13,53,270.70/- (Rupees Six Crore Thirteen Lacs Fifty Three Thousand Two Hundred Seventy and Seventy Paise Only) on part of the Corporate Debtor as per the CGST Rules.

34. The Respondent No.1 consistently followed up with the Corporate Debtor for the release of the outstanding admitted payment of Rs. 6,13,53,270.70/- (Rupees Six Crore Thirteen Lakh Fifty-Three Thousand Two Hundred Seventy and Seventy Paisa Only), but the Corporate Debtor failed to pay the same. The Respondent No.1 further vide e-mail dated 07.01.2023 asked for the outstanding payment from the Corporate Debtor and further informed that the Respondent No.1 was undergoing cash crunch and requested to release the payment. The Respondent No.1 met with the Corporate Debtor on 24.01.2023 at the head office of the Corporate Debtor in Mumbai. Further, the Respondent No.1 vide email dated 11.02.2023 informed the Corporate Debtor that the last consignment was also dispatched and requested to release the outstanding payment. The Respondent No.1 further requested the Corporate Debtor to release the outstanding payment of Rs. 6,13,53,270.70/- (Rupees Six Crore Thirteen Lakh Fifty-Three Thousand Two Hundred Seventy and Seventy Paisa Only). The Corporate Debtor vide email dated 23.02.2023 asked the Respondent No.1 to visit the office of the Corporate Debtor. The Respondent No.1 vide email dated Company Appeal (AT) (Insolvency) No. 526 of 2025 17 of 39 25.02.2023 asked the Corporate Debtor to confirm the meeting dated 02.03.2023 and shared the Ledger statement with the Corporate Debtor. The Corporate Debtor vide email dated 25.02.2023 confirms the meeting dated 02.03.2023 with the Respondent No.1.

35. Further, the Corporate Debtor, despite two meetings and several emails and phone calls, failed to pay the Outstanding amount Rs. 6,13,53,270.70/- (Rupees Six Crore Thirteen Lacs Fifty Three Thousand Two Hundred Seventy and Seventy Paise Only). The Corporate Debtor is taking advantage of its own wrong, sought a consent on the alleged detailed calculation sheet and

consequential sheet allegedly shared by the Corporate Debtor to the Respondent No.1. The Respondent No.1 vide email dated 17.03.2023 asked for the detailed calculation sheet and consequential sheet, which the Corporate Debtor did not share until 01.11.2023. The contents of the email dated 17.03.2023 are reproduced below for the kind perusal of this Hon'ble Tribunal: -

> "Dear Mr. Rohit, Thank you for your email dated 16 March 2023. We had insisted (Vide our trailing email) that you share the detailed calculation sheet and consequence sheet to us. Please do recall that I had personally requested you two times to send the same phone, and you said that you will do it. I am waiting for you to share the same to us and why are you reluctant to share it?"

36. Further, the Corporate Debtor instead of sending the consequence sheet, asked the Respondent No.1 to visit the Head office of the Corporate Debtor vide email dated 18.03.2023.

37. Respondent No.1 writes a detailed email dated 23.03.2023 to the Corporate Debtor capturing all the events and discussion between both of them Company Appeal (AT) (Insolvency) No. 526 of 2025 18 of 39 on call, emails and one to one meetings and further requests to release the outstanding payment of Rs. 6,13,53,270.70/- (Rupees Six Crore Thirteen Lacs Fifty-Three Thousand Two Hundred Seventy and Seventy Paise Only). The Corporate Debtor, vide email dated 25.03.2023 and 28.03.2023, kept asking for acceptance from the Respondent No.1 on the alleged calculation sheet and consequential sheet, which had never been shared with the Respondent No.1 by the Corporate Debtor in person or through email until 01.11.2023. The content of the email dated 23.03.2023 sent by Respondent No.1 to Corporate Debtor is being reproduced below for the kind perusal of this Hon'ble Tribunal: -

> "2. Subsequently, there were two telephonic talks after our second meeting, wherein you had agreed to formally send your final proposal to us which never reached us. Our email communication has reference to this discussion but the actual details from you were never shared."

Further, the content of the email dated 28.03.2023 sent by Corporate Debtor is being reproduced below for the kind perusal of this Hon'ble Tribunal: -

> "Dear Sir, your acceptance on the detail calculation sheet of consequences is still awaited. Provide the same so that balance payment shall be released."

It is pertinent to mention that the Respondent No.1 had to consistently request them to release the said document or payment for the admitted due amount. However, the Corporate Debtor failed to share the same and release the admitted debt.

38. The Operational Debt was Rs. 6,13,53,270.70/- (Rupees Six Crore Thirteen Lacs Fifty Three Thousand Two Hundred Seventy and Seventy Paise Only), which the Corporate Debtor has failed to clear till date. Company Appeal (AT) (Insolvency) No. 526 of 2025 19 of 39

39. Since the Corporate Debtor failed to clear the admitted operational debt even after multiple reminders, the Respondent No.1 was constrained to issue a Demand Notice under Section 8 of the Insolvency & Bankruptcy Code, 2016 read with Rule 5 of the Insolvency and Bankruptcy (Application of Adjudicating Authority Rules, 2016) on 01.07.2023.

40. That the reply was received against the Demand Notice from the Corporate Debtor on 14.07.2023. The Corporate Debtor has neither denied the contents of the Demand notice dated 01.07.2023, nor disputed or denied the outstanding admitted liability of Rs. 6,13,53,270.70/- (Rupees Six Crore Thirteen Lacs Fifty Three Thousand Two Hundred Seventy and seventy paise only). The Corporate Debtor has unequivocally admitted the debt to the tune of Rs. 3,97,44,173.70/- (Rupees Three Crore Ninety Seven Lacs Forty-Four Thousand One Hundred and Seventy-Three Only), thereby not rejecting or denying the same.

41. That the debt in the present case is an admitted debt due and payable which can be seen from the Bank Statement of the account maintained by the Respondent No.1 reflecting non-payment of the outstanding dues. Since, the debt is unequivocally admitted by the Corporate Debtor exceeds more than Rs. 1 Crore, the Petition filed by the Respondent no.1 under Section 9 of the Act was deemed to succeed.

42. The Respondent No.1 filed Company Petition under Section 9 before the Hon'ble National Company Law Tribunal, Bench V, Mumbai, requesting to initiate insolvency proceedings against the Corporate Debtor due to default in Company Appeal (AT) (Insolvency) No. 526 of 2025 20 of 39 the payment of admitted debt amounting to Rs. 3,97,44,173.70/- (Rupees Three Crore Ninety Seven Lacs Forty Four Thousand One Hundred Seventy Three & Seventy Paisa Only). The Respondent No.1 was able to successfully establish the existence of an operational debt that was due and payable, and the Corporate Debtor has committed a default in its repayment.

43. Upon due consideration of facts and evidence produced before the Ld. Adjudicating Authority, it was held that the insolvency should be initiated against the Corporate Debtor and also concluded that the Corporate Debtor is the one who is approbating and reprobating their allegations towards the Respondent No.1. The relevant paras of the Impugned Order passed by the Ld. Adjudicating Authority are being reproduced herein below for kind perusal of the Hon'ble Appellate Tribunal:

> "42. The absence of reference to any disputes in the said email raises a serious doubt as to the Corporate Debtor's claim of pre-existing disputes. In our considered view, the Corporate Debtor cannot approbate and reprobate at the same time and the admission of debt is clear. This Tribunal, therefore, finds that the Corporate Debtor has failed to demonstrate a genuine dispute as contemplated under Section 5(6) of the Code. Consequently, the application under Section 9 of the Code is maintainable, notwithstanding the arbitration clause in the Purchase Orders.
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> 43. It is noted that as per the daily order dated 30.08.2024, the Corporate Debtor had submitted a settlement offer to the Operational Creditor, and this Tribunal had granted time to the Operational Creditor to consider the same. However, the

settlement terms proposed by the Company Appeal (AT) (Insolvency) No. 526 of 2025 21 of 39 Corporate Debtor were found unacceptable. The counsel for the Operational Creditor further submitted that the Operational Creditor wishes to proceed with the present application under Section 9 of the Code.

44. In view of the above submission and based on the findings recorded in paragraphs 25 to 42 above, this Tribunal is satisfied that:

a) The application under Section 9 of the Code is complete in all respects as required by law;

b) There is no payment of the unpaid operational debt;

c) The Corporate Debtor has failed to demonstrate the existence of a genuine dispute regarding the operational debt."

45. Based on the facts, evidence, and legal precedents discussed above, the following conclusions are drawn that the Petitioner has successfully established the existence of an operational debt that was due and payable, and the Corporate Debtor has committed a default in its repayment. The Corporate Debtor, in its response to the email dated 01.11.2023, has acknowledged the outstanding liability, thereby extending the limitation period under Section 18 of the Limitation Act, 1963. Consequently, the petition is well within the period of limitation and is maintainable under Section 9 of the Insolvency and Bankruptcy Code, 2016.

46. This Bench is of the opinion that the Petition deserves to be admitted under Section 9 of the Code."

44. That the Appellant has filed the present Appeal challenging the initiation of Insolvency Proceedings against the Corporate Debtor by the Ld. Adjudicating Authority. It is pertinent to mention herein that there is no pre-existing dispute Company Appeal (AT) (Insolvency) No. 526 of 2025 22 of 39 and the debt amount has been acknowledged and admitted by the Corporate Debtor at multiple instances, including their own pleadings before the Ld. Adjudicating Authority, which unequivocally demonstrates that there is no legal basis for the Appellant to pursue the current appeal. The relevant paras from the pleadings are being reproduced herein for the kind perusal of the Hon'ble Appellate Tribunal: -

"4.4... iv. The inconsistencies raise questions about the accuracy of the Operational creditors claim and potentially begin their case in the insolvency proceedings. The amount has been strategically adjusted to match the amount admitted by the Corporate Debtor to strengthen its case for initiating insolvency proceedings.

4.7.... Inconsistent Debt Amount: Kisaan Steels initially claimed that the Respondent owed Rs. 61353270. 70 in their demand notice. However, this amount was later reduced to Rs. 39744173. 70 in the Petition application, aligning with the amount

admitted by the Respondent."

Therefore, the present appeal is deemed liable to be dismissed, given that the Corporate Debtor has unequivocally admitted to the outstanding debt of Rs. 3,97,44,173.70. It is pertinent to mention that the Corporate Debtor has also admitted the outstanding debt amount in the email correspondences dated 01.11.2023 between the parties. These repeated admissions on the part of the Corporate Debtor substantiate the validity of the initiation of Insolvency proceedings against the Corporate Debtor, affirming that such actions are both proper and in accordance with the law.

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45. All Purchase orders issued by the Corporate Debtor were duly complied to the best of the satisfaction of Corporate Debtor, with goods delivered within the stipulated time frame and received by the Corporate Debtor after meticulous verification by its appointed testing agency. The issues purportedly raised by the Corporate Debtor concerning the delivery timeline and quality of the goods in the present appeal are, in fact, vague and lack substantive evidence on record to support such claims. The Corporate Debtor never released the funds for the Work Orders as per the agreed timelines. One such example being email dated 11.02.2023, the contents of the said email are being reproduced herein: -

> "Dear Sir, Reference: KSPL Work Order No.: KS12797 Please note that we have dispatched the last consignment of the above mentioned Work Order, KS 12797/39 and KS 12797/44. In view of the above, we request you to kindly arrange to release our outstanding payments for which we have been following up with you....."

Furthermore, the Ld. Adjudicating Authority has observed that there exists no pre-existing dispute between the parties, thereby, reinforcing the position that the allegations raised by the Corporate Debtor lack merit and are not grounded in factual circumstances.

46. That it is an established law under the Code that the 'existence of the dispute' must be pre-existing, i.e., it must exist before the receipt of the demand notice or invoice. The parameter to ascertain whether there is a dispute or otherwise can be summarized as under: -

> Company Appeal (AT) (Insolvency) No. 526 of 2025 24 of 39 i. The dispute should have prima facie bona fide and exists naturally in a given fact;
>
> ii. The grounds for alleging the existence of a dispute should not be spurious, hypothetical, illusory or misconceived; iii. The existence of a dispute need not require further to be proved; iv. The dispute should be natural and not a made to believe dispute.

47. That Section 61 of the Insolvency & Bankruptcy Code, 2016 states that:

> "Section 61: - Appeals and Appellate Authority. -

> 5) An appeal against an order for initiation of corporate insolvency resolution process passed under sub-section (2) of section 54-0, may be filed on grounds of material irregularity or fraud committed in relation to such an order."

It is pertinent to observe that the Appellant has not contended any material irregularity or fraud while filing the present appeal. Hence, in the absence of the same, the present appeal is not maintainable in its original form as there is no reasonable ground to impugn the order dated 24.03.2025 passed by the Hon'ble NCLT, Mumbai.

48. The Appellant, by way of the present Appeal, is trying to bring on record new facts/ claims and documents which are not permissible under the prevailing law i.e., the appellant is alleging that the Board Resolution was not proper as the signatory of Respondent No.1 was allegedly not authorized to file a company petition for initiation of the Corporate Insolvency Resolution Process of the Corporate Debtor. The Corporate Debtor could have raised such frivolous allegations before the Adjudicating Authority instead of raising fresh allegations before the Hon'ble Appellate Tribunal. The Appellant is raising fresh allegations against the Respondent No.1 that have never been pleaded before the Ld. Adjudicating Authority that are against the legal principles. It is submitted that the Appellant cannot change the fate of the impugned order, thereby raising new Company Appeal (AT) (Insolvency) No. 526 of 2025 25 of 39 contentions before this court by way of an appeal. Further, it is pertinent to mention that the appellate jurisdiction involves re-hearing on law as well as on fact. Therefore, it can be concluded that the introduction of new allegations or evidence can be construed as a fundamental alteration of the established facts of the case.

49. The alleged issue of authority under the Board Resolution is merely a typographical error that does not alter or affect the insolvency proceedings initiated against the Corporate Debtor in any manner. The error in the Board resolution is a curable one. The Demand Notice was sent by the Advocate duly authorized by the Respondent no.1 and the Petition under Section 9 was also filed by the same Advocate duly authorized by the Respondent no.1. It is an established principle of law that when a demand notice is issued through an Advocate duly instructed by the Respondent No.1, the demand notice and the petition filed thereof shall need no specific authority.

50. The Appellant could have raised all the allegations during the pendency of the petition before the Ld. Adjudicating Authority and had the opportunity to present them prior to the final conclusion of that process. However, the Appellant has chosen to introduce these allegations at the Appellate stage. It is a rule of law that the fresh claims or documents cannot be produced at the stage of appeal. Further, the Hon'ble Appellate Tribunal following the law of land have discouraged Appeals based on new contentions wherein the Appellant cannot produce the claims or documents as per its whims and fancy before the Ld. Authority or this Hon'ble Court. Such insouciant conduct on the part of the Company Appeal (AT) (Insolvency) No. 526 of 2025 26 of 39 Appellant towards the procedure of law and the Hon'ble Appellate Tribunal should not be allowed, and consequently, the present appeal ought to be dismissed.

51. On the such event of Corporate Debtor delaying the Order was that the Corporate Debtor vide email dated 08.12.2021 had sent the PO dated 08.12.2021 reference number GEF/PO/326/21-22 to

Respondent no.1. The said PO was acknowledged by the Respondent No.1 vide email dated 14.12.2021. The Corporate Debtor vide email dated 23.12.2021, sent the Forging approved QAP (Quality Assurance Plan). The Corporate Debtor further for the second time vide email dated 06.01.2022 again issued Forgings Sketch to Respondent No.1 and requested to review the same and send an acknowledgement to the same thereby changing the Forgings Sketch shared vide email dated 23.12.202. The Corporate Debtor vide email dated 19.01.2022 further for the third time issued Non- standard forgings sketch final control copy and requested to please review the same to the Respondent No.1. The Respondent No.1 vide email dated 19.01.2022 informed the Corporate Debtor "we had already started forgings as per your given approval drawings, if you will change any drawings then how we shall speedup forgings". The Respondent No.1 vide email dated 20.01.2022 provided the item- wise drawings and sought confirmation on the same. The Corporate Debtor vide email dated 30.03.2022 sent the Amended Purchase order bearing reference number GEF/PO/326/21-22 dated 08.12.2021.

52. The said instance is evidence of the conduct of the Corporate Debtor towards the Respondent no.1, and the aforementioned purchase order issued by Company Appeal (AT) (Insolvency) No. 526 of 2025 27 of 39 the Corporate Debtor, is the single one that took more than 8 months to finalize. The Respondent No.1 cannot be penalized for the delays caused by the Corporate Debtor.

53. As mentioned in the above paragraphs no. 26 & 27 of the present reply, it is amply clear that the Corporate Debtor failed to provide the requisite information, drawings and other necessary information and further kept changing the drawings from time to time thereby delaying the initiation of the manufacturing process. That the Respondent No.1 was duly complying with the timelines decided between the parties, however, it was the Corporate Debtor who was consistently delaying the necessary approvals and making amendments to already approved order of forging work.

54. The goods were supplied to the Corporate Debtor after receiving due approval from an independent agency assigned by the Corporate Debtor themselves to inspect the quality of the goods before the dispatch. It is also pertinent to mention that the goods supplied by the Respondent No.1 were as per the satisfaction of the Corporate Debtor and the terms of the Purchase Order. Hence, it proves that there was no pre-existing dispute between the parties.

55. In order to establish that there was a pre-existing dispute between parties, the burden of proof lies upon the Appellant to explain why the Appellant did not address the said issue further with the Respondent No.1 at an earlier stage or follow up with details regarding the same. The said act of raising the alleged issue of quality before the Hon'ble Appellate Tribunal seems convenient and Company Appeal (AT) (Insolvency) No. 526 of 2025 28 of 39 frivolous in nature. The said allegations need not be considered or entertained by this Hon'ble Authority.

56. Pursuant to Section 61(5) of the Insolvency and Bankruptcy Code (IBC), the Appellant is entitled to seek recourse from this Hon'ble Authority only in cases where there is evident material irregularity in the order passed by the Ld. Adjudicating Authority for initiating insolvency proceedings against the Corporate Debtor. In the present matter, the Ld. Adjudicating Authority has

passed a comprehensive and well-reasoned order that substantiates the initiation of such proceedings, grounded in a meticulous examination of the relevant facts and applicable legal provisions. As such, the appeal filed by the Appellant challenging the impugned order dated 24.03.2025, lacks merit and fails to meet the requisite criteria for intervention.

57. The Appellant has failed to demonstrate the requisite locus standi to initiate the present Appeal and has submitted a deficient Affidavit in support of the Appeal. Further, the present appeal is not accompanied with the certified copy of the impugned judgement dated 24.03.2025, which is mandated under Rule 22 (2) of the NCLAT Rules and the Appellant has also failed to supply typed copies of the dim annexures as per the NCLAT Rules. Such actions on part of the Appellant reflect their casual approach towards the case, law, procedure and the Hon'ble Appellate Tribunal, which should not be permitted and renders the appeal subject to dismissal due to the non-compliance of NCLAT Rules by the Appellant.

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58. The present appeal and the entire case of the Appellant herein is based on baseless and frivolous grounds which have no tenability in the eyes of the law. Appraisal

59. We have heard the counsels of both sides and also perused the materials on record.

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60. Both sides were heard and orders were reserved earlier on 19th February 2026. Immediately after we had reserved the order, the Learned Senior Counsel for the Appellant submitted that he will also, without prejudice to his contention in this appeal, try to negotiate with the Respondent. We had noted that the Appellant is free to do the same. Thereafter, on 10th March 2026, we had noted that both parties may file a memorandum of settlement. Thereafter, on 1st April 2026, we had ordered that even though the case was pending for the pronouncement of judgment, the appellant had filed an affidavit along with the demand draft, offering to pay the sum whose default led to an admission of corporate debtor to CIRP in the petition filed by R1 under Section 9 of IBC. Even though, because of an interim order passed by this Tribunal, the IRP had not constituted the COC as yet, we had required the first respondent to file the memo of settlement for this Bench to move ahead in this matter, and the matter was listed on 15th April 2026.

61. On 21st April 2026, a statement was made before us that the respondent is not agreeable to filing a written memorandum of settlement. Therefore, we had finally reserved the matter for judgment, as was earlier ordered by us on 19th February 2026. Accordingly, we proceed to write and pronounce the judgment in this case.

62. The main ground of the Appellant, who is a Suspended Director of the CD, is that the Section 9 petition was not maintainable due to pre-existing disputes. Even the impugned order notices the pre-existing dispute but relying on a Company Appeal (AT) (Insolvency) No. 526 of 2025 31 of 39 communication dated 01.11.2023 which is issued by the Appellant to the Operational Creditor, the

CIRP was admitted against the CD.

63. The appellant claims that despite the appellant approaching R1 to make payment of the petition claim amount, the adjudicating authority on 24 March 2025 admitted the company petition and initiated CIRP.

64. On 19 February 2026, this tribunal had concluded the arguments and the orders were reserved, on the insistence of the appellant that they would without prejudice to his contention in this appeal, try to negotiate with the Respondent. We had noted that the Appellant is free to do the same.

65. In his affidavit dated 24th February 2026, the appellant claims that R1 has refused to accept the petition claim amount and is instead demanding an exaggerated sum of Rs. 5.91 Crs. Even though they had offered Rs. 4.25 Crs to demonstrate bona fide and towards full and final settlement, but it was rejected by R1. The appellant claims that such a demand is contrary to their own statement and the petition claim amount, and that the balance amount claimed in the demand notice was disputed by the corporate debtor. The appellant claims that proceedings under IBC are not meant for recovery of dues. This has been settled by the Honorable Supreme Court in the case of M/s Invent Asset Securitization and Reconstruction Limited versus Girnar Fibers Limited. It has been held that the provisions of the IBC are essentially intended to bring the CD to its feet and are not money recovery proceedings as such. Company Appeal (AT) (Insolvency) No. 526 of 2025 32 of 39

66. The appellant further claims that R1 cannot, in law, seek or recover any amount beyond the petition claim amount, particularly amounts they themselves have acknowledged to be disputed. The refusal of R1 to accept the petition claim amount demonstrates that the company petition was filed not for resolution, but as a means to extract payment of both disputed and undisputed amounts - an abuse of the IPC framework. The appellant further claims that the Appellant seeks to tender demand draft dated 23rd Feb 2026 towards the entire petition. Since the appellant is discharging the entire petition amount, nothing remains outstanding under the company petition. The appellant claims that the CD is a micro, small and medium enterprise and continues to use it as its own. The Appellant further claims that the R1 is abusing and misusing the provisions of the IBC despite being offered payment of the entire petition claim amount. And since petition under Section 9 of the IBC is not a recovery proceeding and cannot be misused to pressurize the CD into claiming monies that are bona fide disputed.

67. We observe that the procedure laid down in the code requires an initial demand notice, and an opportunity to settle the dues was very much available with the Appellant if it was bonafide interested to settle it. However, it did not avail of that opportunity and contested the claim before the Adjudicating Authority. The Adjudicating Authority did not accept the contention of the Appellant and passed an order admitting the Corporate Debtor into insolvency under Section 9.

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68. In the appeal before this Appellate Tribunal also, the appellant has contested the appeal and, after the conclusion of the arguments, once again offered to settle the matter. It was clearly told to

the appellant that if they intend to settle, they are free to do so, but ultimately, they will have to go through Section 12A route. However, both parties have not been able to file a written memorandum of settlement. However, both parties have not been able to file a written memorandum of settlement.

69. We observe that the R1-Kissan had issued a demand notice on 1st July 2023, demanding payment in respect of unpaid operational debt due from Appellant-Gemini to the extent of Rs. 6.13 crs for various purchase orders, as noted at page 178 of the Appeal Paper Book.

70. In reply to the Demand Notice of R1, the Appellant - Gemini - had on 14th July 2023 issued a reply, through its advocate, claiming that, due to factors as noted in the letter, their client had prepared a consequence sheet after validly factoring in the late delivery charges and charges pursuant to defects in quality. The summary in a tabular format giving the defaults, instructions, deviations, and failures with respect to various purchase orders was enclosed in this letter, which is extracted as below:

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71. Basis above it is claimed that there subsists a pre-existing dispute with respect to the quality and delivery of goods provided by the respondent one.

72. This has also been converted into a consequence sheet, which is extracted as below and which was referred to in the above reply also:

73. The above consequence sheet has clearly brought out the details of various purchase orders and also the penalty by the appellant on undelivered equipment and also liquidated damages. It has clearly worked out the balance amount payable to the two R1, which is indicated as Rs 3,84,63,113. Company Appeal (AT) (Insolvency) No. 526 of 2025 35 of 39

74. We observe that the email dated 26.06.2023 which was issued from Operational Creditor to the Corporate Debtor crystalizes the debt amount of Rs.6.13 Crores. Since the OC did not get any response, therefore, a notice under Section 8 on 01.07.2023 with respect to the amount of Rs. 6.13 Crores was issued. OC received the reply of the Corporate Debtor raising dispute with respect to some invoices. Accordingly, OC changed the amount in Section 9 petition restricting the debt and default to undisputed total amount of Rs. 3.97 crores. Later on OC received an email placed at page 198 in which the Corporate Debtor requested the respondent to accept the consequences sheet, so that the Corporate Debtor will pay. We observe that it is a pre-condition or a sort of a coercion. We note that in a worst-case scenario, the Corporate Debtor had to pay to the OC an amount of R.3.97 crores qua which there was no dispute and which is above threshold. The consequence sheet is at page 200 APB, which confirms undisputed amount and which is signed by the Corporate Debtor itself.

75. We also observe that on the one hand, the appellant is claiming that there are issues related to quality and delay, which in any case are governed by the terms and conditions of the work order and

basis that the appellant has already imposed damages and cost as per above tables and consequences sheet on R1. On the other hand, Appellant is still claiming that there are issues related to quality and delay. Since the issues related to quality and delay are governed by the contractual terms and conditions of the work order, and the appellant itself has incorporated them and prepared a consequences sheet and shared it with the R1 and later on has agreed to pay this amount, therefore the claim of the Company Appeal (AT) (Insolvency) No. 526 of 2025 36 of 39 Appellant that there are issues relating to quality and delay and that is leading to a dispute is an untenable ground for a pre-existing dispute.

76. Accordingly, the adjudicating authority has noted in the impugned orders that the operational creditor has placed on record an email dated 1st November 2023 issued by the corporate debtor to the operational creditor, in which the CD categorically states that the payment would be made and, in case of default, the operational creditor may proceed with arbitration proceedings. It is also noted that there is no mention of any pre-existing dispute regarding the quality of goods or delays in delivery.

77. It is also noted by the Adjudicating Authority that the CD had submitted a settlement offer to the operational creditor as per the daily order dated 30th Company Appeal (AT) (Insolvency) No. 526 of 2025 37 of 39 August 2024. However, the settlement terms proposed by the corporate debtor were found unacceptable. It was noted by the Adjudicating Authority that the operational creditor wanted to proceed with the present application under Section 9 of the Code.

78. Strangely, we see the same pattern before this appellate tribunal also. The appellant, after fully concluding the arguments, offered to settle, but the settlement was not acceptable to the operational creditor; therefore, we had to proceed to decide the appeal.

79. We observe that the Corporate Debtor had the opportunity to make payment on receipt of the Demand Notice, but it did not avail that opportunity. Later on, at the stage of both the Adjudicating Authority and the appellate authority, it offered an amount which was not acceptable to the Operational Creditor. The Corporate Debtor had insisted on accepting the consequence sheet prepared by the Appellant and it was a precondition for making a payment. We observe that by forcing the Operational Creditor to accept the consequence sheet and then only payment could be made is holding the Operational Creditor under a gun.

80. We have gone through the material placed on record and also basis the submissions and arguments made by both parties; we find that an undisputed amount has been crystalized which is signed and conveyed to the Operational Creditor to the extent of Rs. 3.84 Crores and which cannot be denied at this stage that there is a dispute with respect to this amount. Once the Corporate Debtor has accepted this amount, it cannot say that there is a pre-existing Company Appeal (AT) (Insolvency) No. 526 of 2025 38 of 39 dispute. In fact, on the invoices on which some issues existed, it was related to delay in delivery for which LD has also been levied. We have perused the consequence sheet and we are satisfied that there is no dispute with respect to the contemporaneous calculations provided by the Corporate Debtor to the Operational Creditor. We are therefore, convinced that there is no pre-existing dispute. We observe that the appellant is trying to create a

hypothetical or spurious or illusionary dispute and using that as shield is not willing to allow the proceedings under Section 9 of the Code to proceed further. In the facts and circumstances of the case we find that find that Appellant cannot get any assistance from the judgments cited by it relating to Mobilox (supra) and Praveen Sharma (supra) as there is no pre-existing dispute. All the cited judgments test the pre-existing dispute which is not the case herein. Order

81. We therefore, do not find any infirmity in the orders of the Adjudicating Authority. Accordingly, the appeal is dismissed. All related IA's are also disposed of. The Insolvency Proceedings should restart forthwith. No orders as to costs.

[Justice N Seshasayee] Member (Judicial) [Arun Baroka] Member (Technical) [Indevar Pandey] Member (Technical) New Delhi.

May 11, 2026.

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