



**IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH, COURT NO. I
KOLKATA**

Company Petition (IB) No. 133/KB/2022

*An Application under Section 9 of Insolvency and Bankruptcy Code, 2016
read with Rule 6 of the Insolvency and Bankruptcy (Application to
Adjudicating Authority) Rules, 2016*

IN THE MATTER OF:

Unitech Water Technologies Private Limited

..... Operational Creditor

Versus

Bengal Chemicals and Pharmaceuticals Limited

..... Corporate Debtor

Date of Pronouncement: 25th day of March, 2026

CORAM:

SMT. BIDISHA BANERJEE, HON'BLE MEMBER (JUDICIAL)

CMDE SIDDHARTH MISHRA, HON'BLE MEMBER (TECHNICAL)

APPEARANCE:

Mr. Kuldip Mullick, Adv.	]	For the Operational Creditor
Mr. Sashi Agarwal, Adv.	]	
Ms. Meenakshi Manot, Adv.	]	

Ms. Manju Bhuteria, Sr. Adv.	]	For the Corporate Debtor
Ms. Arundhati Barman Roy, Adv.	]	
Mr. Shubhrato Chaudhury, Adv.	]	

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ORDER

Per: CMDE SIDDHARTH MISHRA, HON'BLE MEMBER (TECHNICAL):

1. The Court convened via hybrid mode.
2. The instant application is preferred under Section 9 of the Insolvency and Bankruptcy Code, 2016, read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 by the Unitech Water Technologies Pvt. Ltd., hereinafter referred to as the "Applicant"/ "Operational Creditor" against Bengal Chemicals & Pharmaceuticals Ltd. hereinafter referred to as "Respondent" / "Corporate Debtor" seeking direction from this Adjudicating Authority to initiate Corporate Insolvency Resolution Process, (for brevity "CIRP") in respect of the Corporate Debtor.

3. Factual Matrix:

- 3.1. The Operational Creditor is involved in the business of design & engineering, execution of project and manufacturing of equipments/systems for treatment of water & wastewater including its reuse.
- 3.2. That both the OC and the CD are in business relationship, whereby on 22.10.2010 invoices were raised upon the CD, for the charges payable by the CD to the OC for providing supply, transportation including unloading, installations and commissioning of fire protection system.
- 3.3. The principal amount claimed to be in default is Rs 1,01,32,527/- (Rupees One Crore One Lakh Thirty Two Thousand Five Hundred and Twenty Seven only).

4. Submissions of the Applicant:

- 4.1. It is submitted that the Section 9 Application is for an operational debt of Rs. 1,01,32,528/-, excluding interest, but including the CGST and SGST, which was due and payable by the Corporate Debtor and the same is supported by reconciled invoices.

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- 4.2. It is submitted that the Operational Creditor was issued purchase order/work order dated November 22, 2010 for supply, transportation including loading, unloading, installation and commission of fire protection system for liquid blocks, etc. for a consideration of Rs. 1,35,24,000/-.
- 4.3. It is submitted that during the pendency of the said work order, another additional work order was issued being dated May 26, 2015 for a sum of Rs. 50,966/- and Rs. 39,88,701/- as the OC was performing satisfactory job.
- 4.4. It is submitted that a meeting was held on March 23, 2020 and it was decided that the pending bills of the petitioner would be decided by the end of June, 2020, but no payment was made by the CD even after the calling of meeting and promise to pay.
- 4.5. It is submitted that a notice dated May 19, 2021 was issued calling upon the Corporate Debtor to make payment and was replied by the CD vide letter dated June 21, 2021, wherein the CD had agreed that the payment was due to the petitioner.
- 4.6. It is submitted that a meeting between OC and CD was held on August 7, 2021, wherein the CD and its men and agents assured that they would decide the payment to be made to the OC within 15 days and same would be communicated to the OC.
- 4.7. It is submitted that the CD raised issue about non completion of work, which was categorically denied by the petitioner, and to mitigate this dispute a joint inspection was held on and from November 18, 2021 to December 11, 2021, and the inspection report was signed by all the parties and no dispute was raised during and after the inspection.
- 4.8. It is submitted that the Petitioner raised bills amounting to Rs. 1,63,33,054/- including CGST and SGST for the total work done, and pursuant thereto, a payment of Rs. 62,23,554/- including CGST and SGST was made, and a total of Rs. 1,01,32,528/- including CGST and SGST, was due and payable by the Corporate Debtor.

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- 4.9. It is submitted that the OC issued a notice dated 16.03.2022 under Section 8 of the I&B Code, 2016, which was duly received by the CD and the CD has not denied receiving the said notice and no reply for raising dispute has been received by the CD.
- 4.10. It is submitted that the petition under Section 9 of the Insolvency and Bankruptcy Code, 2016, is maintainable as the Adjudicating Authority is only required to verify the existence of debt and default.
- 4.11. It is submitted that as the CD has allowed the OC to continue with the work, then how come CD claim that time was the essence of the Contract. They placed reliance on **State of Kerala and Anr. V. M.A. Mathai (2007) 10 SCC 195.**

5. Submissions of the Respondent:

- 5.1. It is submitted that the present petition does not meet the threshold of Rs. 1 Crore and as such the petition is not maintainable.
- 5.2. It is submitted that the CD had issued a notice inviting tender dated May 28, 2010 for Fire Protection system at their Factory at Maniktala and that upon installation a Completion Certificate would be issued.
- 5.3. It is submitted that there is no mention for payment of interest to the successful bidder in terms of the Tender Document.
- 5.4. It is submitted that the CD had issued a Work Order dated 22.11.2010 to the OC and it has been mentioned that the OC would undertake to supply, *inter alia*, in terms of the Notice inviting Tender.
- 5.5. It is submitted that as per the terms mentioned, the delivery was to be within 5 months and there has to be a penalty clause for delay, and the payments were to be made as per actual measurement at site and the work order did not contain any provision for interest.
- 5.6. It is submitted that thereafter two amendments were issued to the said work order vide Amendment No. 1 dated 26.05.2015 and Amendment No. 2 dated 24.09.2015.
- 5.7. It is submitted that the claim of the OC arises from the work order issued for Fire Protection System at the Factory at Maniktala, the

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OC carried out part-work, raised invoices from time to time for its work and the said work has not been completed till date.

- 5.8. It is submitted that the OC had raised bills for total aggregate value of Rs. 80,55,691/- and the CD made payment of Rs. 52,82,136/- (from 2010 to 2017), hence, only a balance sum of Rs. 27,73,555/- is remaining, and the same is evident from the ledger provided with the petition, which mentions the invoices that were raised between 2010 till 2017.
- 5.9. It is submitted that the payment of the aforesaid amount of Rs. 27,73,555/- could not be made as GST Act, 2017 had come into effect from July 01, 2017 and as the CD is a public sector undertaking. the CD could not release the said amount till a GST Compliant bill was submitted to it.
- 5.10. It is submitted that the final work was never completed by the OC and this has been recorded even in the Minutes of the Meeting held on 18.09.2021, wherein it was highlighted that with respect to the pending job, OC would take necessary steps to make a physical inspection and measurement in the presence of CD to process the final bills.
- 5.11. It is submitted that the minutes also recorded that “The parties have mutually agreed to further sit for reconciliation before raising the final bill for remittance after completion of the physical inspection of the Fire Fighting Project.”, but the same has not been done and there is no reconciliation.
- 5.12. It is submitted that the OC has alleged in the petition that joint inspection was held on 18.11.2021, and a final invoice was raised, but it is evident from the MOM dated 18th September, 2021 that after physical inspection, reconciliation of accounts was required to be done, and the same was not done. As such the question of raising any bill by the OC does not and cannot arise.

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- 5.13. It is submitted that the CD has not received any RA bill No. 13 and the contents of the said RA Bill No. 13 are untrue, incorrect, denied and disputed.
- 5.14. It is submitted that the inspection held on 18.11.2021 cannot be a final inspection as the Petitioner failed to complete the work as is evident from the fact that no completion certificate has been issued.
- 5.15. It is submitted that the final invoice has never been raised on CD by the OC and could not have been raised as there had been no reconciliation, and the final bill is a false and manufactured document.
- 5.16. It is submitted that there is not a single signature of the CD in the final invoice, and the allegation that the CD has not disputed the bill is preposterous as the invoice was never served on the CD.
- 5.17. It is submitted that there are pre-existence of disputes much prior to issuance of the demand notice as no completion certificate has been issued by the CD to the OC till date, which is evidence of the fact that the OC failed to complete the work and for that placed reliance on Navkar Urbanstructure Ltd. vs. Niyojit Infratech Pvt. Ltd. by the Hon'ble NCLAT, wherein it was held that when Completion certificate regarding work order was never issued, the amount claimed by the Operational Creditor is disputed.
- 5.18. It is also submitted that the contention of the OC that the CD is fraudulently and maliciously not issuing the completion certificate is an issue which cannot be adjudicated by this Adjudicating Authority and it amounts to pre-existence of dispute.
- 5.19. It is submitted that the pending of reconciliation of Accounts amounts to pre-existence of disputes and for that placed reliance on East India Udyog Ltd v. SPML Infra Limited, wherein it was held that pending reconciliation of accounts amount to pre-existence of dispute.
- 5.20. It is submitted that emails have been issued by CD to OC about delay in progress of work from July 30, 2016 to January 25, 2019.

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- 5.21. It is submitted that the reliance placed by the OC on State of Kerala & Anr. v. M.A. Mathai by the Hon'ble Supreme Court wherein it was held that the CD cannot claim that the time was of essence of the contract as the CD has waived the same, but whether time was essence of the contract or not or if CD has waived the clause or not can only be decided in trial before the Civil Court and not by this Hon'ble Tribunal under Section 9 of the IBC.
- 5.22. It is submitted that the OC has alleged that in joint meeting held on 07.08.2021, CD had assured that payment would be made to the OC within 15 days. But the same is contrary to records and in the said MOM, the OC was requested by the CD to finish pending job and the quantum of "part payment" was to be discussed in the next meeting and the embargo regarding PF was discussed.
- 5.23. It is submitted that the contentions of the OC that no payment had been received in terms of the meeting held on 07.08.2021, reminder letters dated 27.08.2021 and 10.09.2021 were sent is completely false, as the CD has not received any letter dated 27.08.2021 or 10.09.2021 and the letters do not bear the stamp or signature of the CD.
- 5.24. It is submitted that the Petition should be dismissed for suppression of earlier demand notice dated May 19, 2021 wherein the OC had alleged that only a sum of Rs. 83,50,700/- is due on account of Principal and a sum of Rs. 60,12,504/- is due on account of interest @18%, for the fire protection system at the Factory at Maniktala, which is the subject matter of this petition also.
- 5.25. It is submitted that the OC had also suppressed the reply issued by CD on June 21, 2021, wherein the CD denied about any outstanding amount.
- 5.26. It is submitted that the OC has alleged in the 2nd demand notice dated 16.03.2022 that the principal outstanding is Rs. 85,86,888/- and after adding GST @ 18%, the figure is coming to Rs.

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1,01,32,528/-, and after including interest @ 18% p.a., the total figure comes to Rs. 1,75,71,713/-.

- 5.27. It is submitted that the ledger of the OC annexed to the Petition itself mentions that a sum of approximately Rs. 27 lacs outstanding, and the OC had not given the GST compliant bills in respect of the said Rs. 27 lacs which was required.
- 5.28. It is submitted that no bill has been raised subsequent to the year 2017 and the principal amount mentioned in the earlier demand notice dated 19.05.2021 is Rs. 83,50,700/-, and the OC has suppressed the earlier demand notice realising that the threshold of Rs. 1 crore did not meet, and after that, the OC alleges that the claim on account of principal is Rs. 1,01,32,528/- including GST without any basis to meet the threshold and the claim is inflated.

6. Rejoinder:

- 6.1. It is submitted that the Operational Debt claimed by Petitioner is Rs. 1,01,32,527/- which is supported by invoices, running ledger and inspection of documents.
- 6.2. It is submitted that the Respondent relies heavily on the Notice inviting tender dated 28.05.2010 to argue that the contractual relationship is governed by tender conditions. The first work order dated 22.11.2010 was issued pursuant to the said tender, however, the two supplementary work orders were issued in favour of the petitioner without issuing any fresh tender.
- 6.3. It is submitted that a party which continues to entrust additional work without competitive bidding is estopped from subsequently alleging dissatisfaction or non performance and such conduct attracts the doctrine of approbation and reprobation and for that placed reliance on the Supreme Court Judgment of Union of India v. N. Murugesan, (2022) 2 SCC 25.
- 6.4. It is submitted that the execution of work by the petitioner is not denied and no debit note, no termination, or no contemporaneous rejection of work was ever issued by the Respondent.

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- 6.5. It is submitted that issuance of a formal completion certificate is not a condition precedent for a Section 9 proceedings, and the actual execution of work and raising of invoices are determinative.
- 6.6. It is submitted that pending reconciliation or settlement talks do not constitute a 'dispute' within the meaning of Section 8 and 9 of the I&B Code.
- 6.7. It is submitted that the alleged disputes are post-demand notice and only surfaced in the reply affidavit and subsequent supplementary affidavits and are afterthoughts to defeat the insolvency proceedings.
- 6.8. It is submitted that the allegation of suppression of earlier demand notice dated 19 May 2021 is wholly without merit as the reply of the Corporate Debtor does not deny liability but merely seeks time and indicates financial constraint and suppression is material only if it conceals a reply raising a dispute.

7. Analysis and Findings:

- 7.1. Upon consideration of the pleadings, documents and rival submissions, the following issues arise for determination:
 - I. Whether the minimum default threshold for maintaining the petition under Section 9 has been satisfied.
 - II. Whether the present Application is barred due to the existence of a pre-existing dispute under Sections 8 and 9 of the IBC?

Issue I: Whether the minimum default threshold for maintaining the petition under Section 9 has been satisfied.

- 7.2. As per Operational Creditor the default amount is Rs. 1,01,32,528/- including CGST and SGST.
- 7.3. However, as per the running ledger account of the CD maintained by the OC, the outstanding amount is only Rs. 27,73,555/-.
- 7.4. It is observed that there is no completion certificate issued by the CD.
- 7.5. It is observed from the MOM dated 18.09.2021, wherein it is recorded that "The parties have mutually agreed to **further sit for**



reconciliation before raising the final bill for remittance after completion of the physical inspection of the Fire Fighting Project.”

- 7.6. Again a joint inspection was held on held on 18.11.2021 and a final invoice was raised based for Rs. 1,01,32,528.
- 7.7. The Hon’ble NCLAT in **East India Udyog Ltd. v. SPML Infra Limited** held that **pending reconciliation of accounts amounts to pre-existence of dispute.**
- 7.8. In view of the above, it can be said that the final invoice was raised prematurely as reconciliation of accounts were pending and completion certificate has not been issued by the CD.
- 7.9. Thus, the present petition is not maintainable as the minimum default threshold has not been met.

Issue II: Whether the present Application under Section 9 of the IBC is barred due to the existence of a pre-existing dispute under Sections 8 and 9 of the IBC?

- 7.10. At the outset, it is apposite to reiterate the settled legal position that the jurisdiction of the Adjudicating Authority under Section 9 of the Insolvency and Bankruptcy Code, 2016 can be invoked only in respect of an undisputed operational debt. Where a real and substantial dispute exists between the parties prior to issuance of the demand notice under Section 8 of the Code, the Adjudicating Authority is duty-bound to reject the application at the threshold.
- 7.11. The CD contends that the OC failed to complete the work which would be evident from the fact that no completion certificate has been issued by the CD to the OC till date.
- 7.12. The CD issued emails to OC about delay in the progress of work from July 3, 2016 to January 25, 2019 and contends that whether time was the essence of contract or not can only be decided in trial before the Civil Court and not by this Tribunal under Section 9 of I&B Code.



7.13. The CD also contends that reconciliation of accounts is pending which amounts to pre-existence of disputes and has been recorded in the MOM dated 18.09.2021 that “The parties have mutually agreed to **further sit for reconciliation** before raising the final bill for remittance after completion of the physical inspection of the Fire Fighting Project.”

7.14. It is pertinent here to refer to the decision of Hon’ble Supreme Court in **Mobilox Innovations Private Ltd vs Kirusa Software Private Ltd (2018) 1 SCC 353**, wherein, the Hon’ble Supreme Court was pleased to hold, inter alia, as follows:

*“40. It is clear, therefore, that once the operational creditor has filed an application, which is otherwise complete, the adjudicating authority must reject the application under Section 9(5)(2)(d) if notice of dispute has been received by the operational creditor or there is a record of dispute in the information utility. It is clear that such notice must bring to the notice of the operational creditor the “existence” of a dispute or the fact that a suit or arbitration proceeding relating to a dispute is pending between the parties. Therefore, **all that the adjudicating authority is to see at this stage is whether there is a plausible contention which requires further investigation and that the “dispute” is not a patently feeble legal argument or an assertion of fact unsupported by evidence. It is important to separate the grain from the chaff and to reject a spurious defence which is mere bluster. However, in doing so, the Court does not need to be satisfied that the defence is likely to succeed. The Court does not at this stage examine the merits of the dispute except to the extent indicated above. So long as a dispute truly exists in fact and is not spurious, hypothetical or illusory, the adjudicating authority has to reject the application.**”*

(Emphasis added)

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7.15. The Hon'ble Supreme Court in the case of **Sabarmati Gas Limited (supra)** has held that **failure of reconciliation of accounts qualifies as a pre-existing dispute.**

7.16. In **Navkar Urbanstructure Ltd. v. Niyojit Infratech Pvt. Ltd.**, (2022) ibclaw.in 900 NCLAT, wherein the Hon'ble NCLAT was pleased to hold, inter alia, as follows:

*"11. The Corporate Debtor in its reply has clearly stated that no amount can be claimed by the Appellant to be due on the Corporate Debtor since no Completion Certificate regarding the work of the Appellant was ever issued. **When Completion Certificate regarding Work Order was never issued, the amount claimed by the Appellant is disputed** and the Adjudicating Authority has rightly taken the view that in view of the pre-existing dispute between the parties the application u/s 9 cannot be admitted."*

(Emphasis added)

7.17. The pre-existing dispute arose on account of no completion certificate has been issued by the CD to the OC till date, and reconciliation of accounts is pending.

7.18. Once the existence of a pre-existing dispute is established, this Adjudicating Authority is precluded from entering into an examination of the merits of the claims or adjudicating upon the correctness of the rival contentions. The Insolvency and Bankruptcy Code is not intended to be used as a substitute for a civil trial or as a forum for resolution of complex contractual and factual disputes.

7.19. In view of the above discussion, we hold that the existence of a pre-existing dispute between the parties stands clearly established prior to the issuance of the demand notice under Section 8 of the Code.

8. In view of this, the Petition being C.P. (IB) No. 133/KB/2022 is **dismissed**. Accordingly, C.P. (IB) No. 133/KB/2022 and any pending IAs are disposed of in the above terms.

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9. Certified copies of the order, if applied for with the Registry of this Adjudicating Authority, be supplied to the parties upon compliance with all requisite formalities.

CMDE SIDDHARTH MISHRA
MEMBER (TECHNICAL)

BIDISHA BANERJEE
MEMBER (JUDICIAL)

The Order signed on this, on the 25th day of March, 2026.

Sagar M. (LRA)