

IN THE NATIONAL COMPANY LAW TRIBUNAL

NEW DELHI, COURT-III

IB – 547(ND)/2025

Order 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.

IN THE MATTER OF:

NAXNOVA TECHNOLOGIES PRIVATE LIMITED

CIN: U74110MH2011PTC222752

Having its registered office at:

76/79, Astarc House, Takpada Makwana Lane,
Marol, Andheri (E), Mumbai,
Maharashtra, India, 400059

... APPLICANT/OPERATIONAL CREDITOR

VERSUS

HERO MOTOCORP LIMITED

CIN: L35911DL1984PLC017354

Having its Registered Office at:

The Grand Plaza, Plot no. 2, Nelson Mandela Road,
Vasant Kunj, Phase - I, New Delhi, 110070

...CORPORATE DEBTOR

Order Pronounced On: 19.05.2026

CORAM:

**SHRI BACHU VENKAT BALARAM DAS,
HON'BLE MEMBER (JUDICIAL)**

**SHRI RAVINDRA CHATURVEDI,
HON'BLE MEMBER (TECHNICAL)**

APPEARANCES:

For the Applicant : Mr. Ramji Srinivisan, Sr. Adv., Mr. Vivek Shetty, Mr. Asadulla Thangal, Ms. Sonali Jain, Mr. Akash Manwani, Mr. Himanshu Kalwani, Mr. Arjun Bhatia, Ms. Shefali Munde, Ms. Anjali Singariya, Advs.

For the Respondent: Mr. Arun Kathpalia, Mr. Krishnendu Dutta, Sr. Advs., Ms. Misha, Mr. Vaijyan, Ms. Kirti, Ms. Shruti Sabhrawal, Mr. Anant, Mr. Sahaj, Ms. Diksha, Mr. Harsh Gerbani, Ms. Shruti Poddan, Mr. Harshit Chaudhary, Advs.

ORDER

1. The Company Petition bearing CP (IB) NO. 547 of 2025 (Section 9 Petition'), was filed on 20 September 2025 by Naxnova Technologies Private Limited (Applicant/Operational Creditor/Naxnova/NTPL), under Section 9 of the Insolvency and Bankruptcy Code, 2016 ("Code") for initiation of Corporate Insolvency Resolution Process (CIRP) against Hero MotoCorp Limited (Respondent/Corporate Debtor/HMCL) for non-payment of alleged operational debt amounting to Rs. 22,50,80,911/- ("Principal Amount") along with interest @18% p.a. accrued till 18 September 2025 (i.e., Rs. 1,42,79,476/-), totaling Rs. 23,93,60,387/- (the "Alleged Dues"). As per the case of Naxnova, the Alleged Dues arise from supplies made under a Vendor Supply Agreement dated 03 September 2009, as amended by a Letter Agreement dated 14 November 2013 ("Agreement"), and various Purchase Orders.
2. The Respondent-Corporate Debtor raised preliminary objections and filed an affidavit dated 05.11.2025 pursuant to the order dated 17.10.2025. The Respondent-Corporate Debtor broadly raised the following grounds on the maintainability of the Section 9 petition:

A. Incurable and deliberate violation of the procedure prescribed under the Code, by issuing multiple demand notices:

- i. It is pertinent to mention that as per scheme of IBC, operational creditor is required to serve mandatory demand notice under Section 8 of IBC clearly stipulating the unpaid operational debt along with copy of an invoice demanding payment of the amount involved in the default to the corporate debtor. The corporate debtor is required, within a period of ten days of the receipt of the demand notice or copy of the invoice, bring to the notice of the operational creditor (a) existence of a dispute, if any, or record of the pendency of the suit or arbitration proceedings filed before the receipt of such notice or invoice in relation to such dispute or (b) pay the unpaid operational debt.*
- ii. Section 9 of IBC mandates that after the expiry of the period of ten days from the date of delivery of the notice or invoice demanding payment under sub-section (1) of section 8, if the operational creditor does not receive payment from the corporate debtor or notice of the dispute under sub-section (2) of section 8, the operational creditor may file an application before the*

Adjudicating Authority for initiating a corporate insolvency resolution process.

- iii. Combined reading of Section 8 and Section 9 of IBC makes it abundantly clear that the procedure and timelines prescribed under IBC are strict in nature. Issuance of multiple demand notices is against the scheme of IBC and it would frustrate basic purpose of IBC.*
- iv. Naxnova purportedly based Section 9 Petition, on demand notice dated 13 July 2025 issued under Section 8 of the IBC This demand notice dated 13 July 2025 is misconceived, as evidenced hereinafter, and in fact Naxnova itself appears to have abandoned the said first demand notice dated 13 July 2025, is as much as, on 09 October 2025, HMCL has received a second demand notice again purportedly under Section 8 alleging same dues. The second demand notice is for the same alleged dues but contents are different. The statutory period for replying to demand notice received on 09 October 2025, was to expire on 19 October 2025, which has been duly done. It is clear that in the light of the second demand notice received on 09 October 2025, the previous demand notice dated 13 July 2025 does not survive and stands abandoned, and consequently any petition under Section 9 founded on such abandoned notice must fail. Clearly, Naxnova, is playing fast and loose with the court and HMCL, especially since they failed to disclose the existence of this second demand notice apart from concealing several facts and documents from this Hon'ble Tribunal. Indeed, orders under Section 65 are merited against Naxnova, wherein HMCL is separately and independently moving an application.*
- v. It is evident that NTPL has issued multiple demand notices to the Respondent. The IBC, 2016 is a procedural Code and the process stipulated therein needs to be followed in the letter and spirit. There is no such provision in the IBC, 2016 and in the Regulation made thereunder that allows NTPL to issue multiple demand notices to the corporate debtor. The multiple demand notices issued by NTPL are beyond the ambit of the IBC.*

B. Existence of Substantial and Pre-Existing Dispute and Arbitration:

- i. There exists a substantial, bona fide, and pre-existing dispute between the parties, which is twofold: (a) persistent and unresolved disputes concerning the quality of goods supplied and alleged breaches of contractual obligations by Naxnova, as evidenced by extensive contemporaneous correspondence and records exchanged between the parties; and (b) the fact that these very disputes, including claims and counterclaims relating to the alleged operational debt and quality of goods, are already sub judice before a duly constituted Arbitral Tribunal pursuant to*

arbitration proceedings initiated under the Agreement. As is explained in further detail in the following sections, HMCL faced consistent quality issues relating to supplies made by Naxnova, and disputed Naxnova's invoices. HMCL terminated the Agreement between parties and commenced the Arbitration on 02 June 2025. Naxnova, on its own volition, accepted initiation of Arbitration proceedings and made a claim for the Alleged Dues in this Pending Arbitration on 17 June 2025, nearly a month prior to the issuance of the first Demand Notice under Section 8 of the IBC, and more than 3 months before it filed the present Section 9 Petition on 20 September 2025. Naxnova's claim for the Alleged Dues, therefore, is disputed and is the subject matter of the ongoing Pending Arbitration. The pendency of the Arbitration proceedings therefore precludes the invocation of insolvency jurisdiction under Section 9 of the IBC.

ii. The scheme of IBC and various judgment of Apex Court clearly mandate that the application under Section 9 is not maintainable where the Arbitration proceedings have been initiated much before issuance of demand notice under Section 8 of the Code.

3. The Respondent-Corporate Debtor submitted that the Applicant seeking initiation of CIRP under Section 9 of the Code is required to follow the procedure and timeline prescribed under Sections 8 and 9 of the Code. It is submitted that the Operational Creditor is required to serve a mandatory demand notice under Section 8 of the Code clearly stipulating the unpaid operational debt along with copy of an invoice demanding payment of the amount involved in the default to the corporate debtor, upon which the corporate debtor is required, within a period of ten days of the receipt of the demand notice or copy of the invoice, bring to the notice of the operational creditor (a) existence of a dispute, if any, or record of the pendency of the suit or arbitration proceedings filed before the receipt of such notice or invoice in relation to such dispute or (b) pay the unpaid operational debt.
4. It is submitted that in the instant case, the Operational Creditor issued two demand notices, one on 13.07.2025 and the second on 09.10.2025. It is, therefore, submitted that the first demand notice dated 13.07.2025 does not survive and stands abandoned upon the issue of the second demand notice dated received on 09.10.2025

5. It is submitted that there is no provision in the Insolvency and Bankruptcy Code, 2016, and regulations made thereunder that allows an Operational Creditor to issue multiple demand notices to the Corporate Debtor and therefore, the present application, filed under Section 9, is not maintainable.
6. The Respondent-Corporate Debtor submitted that disputes concerning the quality of goods supplied and alleged breach of contractual obligations by the Operational Creditor, including claims and counterclaims relating to the alleged operational debt, are sub judice before an Arbitral Tribunal pursuant to arbitration proceedings initiated under the agreement. The Corporate Debtor terminated the agreement between the parties and commenced arbitration on 02.06.2025 because of the quality issues relating to the supplies made by the Operational Creditor. The Operational Creditor made a claim for the alleged dues in the pending arbitration proceedings on 17.06.2025, nearly a month prior to the issuance of the first Demand Notice under Section 8 of the Code and more than 3 months before it filed the present Section 9 Petition on 20.09.2025. Therefore, the present application filed under Section 9 of the Code is not maintainable since the arbitration proceedings had already been initiated long before the issuance of the demand notice under Section 8 of the Code.
7. Learned Senior Counsel appearing on behalf of Operational Creditor, on the contrary, submitted that the grounds raised by the Corporate Debtor challenging the maintainability of the present application filed under Section 9 of the Code go to the merits of the case and are not valid grounds to challenge the maintainability of the present petition. He submitted that the objections on maintainability could be raised if the petition is incomplete or if some mandatory requirements are not satisfied. However, the Corporate Debtor cannot be allowed to contest maintainability by delving into the merits of the matter before issuance of notice. He further submitted that the objections relating to the issuance of multiple demand notices and the existence of pre-existing disputes cannot be grounds on maintainability.

8. We have heard the submissions of Learned Senior Counsel appearing on behalf of the parties and also perused the affidavits filed by the Respondent-Corporate Debtor on maintainability alongwith the documents enclosed therein.
9. Before delving further into the matter, it is necessary to mention herewith that Mr. Arun Kathpalia, Learned Senior Counsel, and Mr. Krishnendu Dutta, Learned Senior Counsel appearing on behalf of Respondent-Corporate Debtor, strongly objected to the maintainability of the instant application filed under Section 9 of the Code broadly on two grounds:
 - (a) Issuance of multiple demand notices
 - (b) Existence of a pre-existing dispute on the ground that arbitral proceedings have been initiated and are pending.
10. Mr. Ramji Srinivasan, Learned Senior Counsel appearing on behalf of Applicant-Operational Creditor, has strongly submitted that the grounds on which the maintainability issues have been raised, in fact, go to the merits of the case and are not a valid ground to challenge the maintainability of the present petition filed under Section 9 of the Code. It is therefore necessary to first examine what could be the grounds for maintainability of the Section 9 application.
11. At the threshold, it is necessary to delineate the contours of jurisdiction exercised by this Adjudicating Authority while examining the maintainability of an application under Section 9 of the Code. The statutory scheme does not contemplate a roving or adjudicatory enquiry into disputed questions of fact at the pre-admission and pre-notice stage. The scope of consideration at this stage is circumscribed and summary in nature, confined to examining whether the application is complete in all respects, whether there exists an operational debt above the prescribed threshold, whether the application is within limitation, whether the application is complete, and whether there exists any legal bar to its institution.

12. The distinction between “maintainability” and “adjudication on merits” is well recognised. Maintainability pertains to foundational legal thresholds such as jurisdiction, limitation, compliance with statutory pre-conditions, and absence of any express bar in law. Matters which require appreciation of evidence, adjudication of rival factual claims, or determination of contractual disputes fall outside the ambit of this limited scrutiny and are to be examined at the stage of admission on merits.
13. An application under Section 9 cannot be rejected at the threshold based on disputed factual assertions raised by the Corporate Debtor, as such issues require consideration at the stage of admission on merits, upon issuance of notice and completion of pleadings, and cannot be conclusively determined at the pre-notice stage.
14. The Hon’ble Supreme Court in *Mobilox Innovations Private Limited v. Kirusa Software Private Limited*, (2018) 1 SCC 353, has held that the Adjudicating Authority is required to examine whether there exists a “plausible contention” indicating a real dispute; however, such examination necessarily arises upon consideration of the reply of the Corporate Debtor to the demand notice and the material placed on record. The said judgment does not contemplate adjudication of such issues at a pre-notice stage, nor does it permit rejection of an application without affording an opportunity to the Corporate Debtor to place its defence on record in accordance with law.
15. In the present case, the objections raised by the Corporate Debtor, namely the existence of a pre-existing dispute, the pendency of arbitration proceedings, allegations of suppression of material facts, etc., are, in substance, issues going to the merits and statutory thresholds governing admission or rejection of the application, and not to its maintainability in the strict procedural sense.
16. Under the scheme of Section 9 of the Code, the question as to the existence of a notice of dispute or a record of dispute in the Information Utility falls for consideration by the Adjudicating Authority at the stage

of admission or rejection under Section 9(5), upon issuance of notice and after affording an opportunity to the Corporate Debtor to file its affidavit-in-reply. The contention of the Corporate Debtor, placing reliance on Section 9(5)(ii)(d) to seek rejection of the present Application at the threshold, is therefore unsustainable. The determination contemplated under the said provision necessarily requires examination of the defence raised and the supporting material placed on record, and cannot be undertaken in a summary manner at the pre-notice stage. Merely characterising such objections as relating to “maintainability” does not render the Application liable to be rejected at this stage, as it would amount to adjudicating disputed questions of fact prematurely, which is impermissible in law.

17. In view of the foregoing discussion, we are of the considered opinion that the objections raised by the Corporate Debtor pertain to matters requiring adjudication on merits at the stage contemplated under Section 9(5) of the Code. Permitting such objections to be adjudicated at the pre-notice stage would amount to converting a summary threshold scrutiny into a full-fledged adjudicatory exercise, which is neither contemplated under the scheme of the Code nor permissible in law.
18. The Respondent-Corporate Debtor has raised substantive objections on the initiation and pendency of arbitral proceedings as well as the issuance of multiple demand notices. Such objections, in our considered view, can also be raised by way of filing a detailed reply affidavit after issuance of notice in the present Section 9 Application for consideration of this Adjudicating Authority.
19. We find force in the submissions of learned Senior Counsel appearing on behalf of the Operational Creditor. We are of the considered view that the present Application satisfies the threshold requirements of maintainability and cannot be rejected at this stage on the grounds urged by the Corporate Debtor. The objections raised by the Respondent-Corporate Debtor can be raised by filing a detailed reply affidavit and be considered at the time of arguments.

20. Accordingly, the present Application is found to satisfy the requirements of maintainability and shall proceed for consideration on merits in accordance with law, upon issuance of notice and completion of pleadings.
21. We, therefore, deem it appropriate to issue notice to the Respondent-Corporate Debtor and direct the Respondent to file a detailed reply affidavit within ten days.
22. List the matter on **05.06.2026**.

Sd/-

**RAVINDRA CHATURVEDI
MEMBER (TECHNICAL)**

Sd/-

**BACHU VENKAT BALARAM DAS
MEMBER (JUDICIAL)**