

IN THE NATIONAL COMPANY LAW TRIBUNAL, BENGALURU BENCH

[Through Physical hearing/ VC Mode (Hybrid)]

ITEM No.01
C.P. (IB) No. 116/BB/2018

IN THE MATTER OF:

M/s APL Apollo Tubes Ltd

... Petitioner

Vs.

M/s Tanisha Scaffolding (India) Pvt Ltd

... Respondent

Petition under Section 9 of I&B Code, 2016

Order delivered on: 09.10.2026

CORAM:

SHRI. SUNIL KUMAR AGGARWAL
HON'BLE MEMBER (JUDICIAL)

SHRI. RADHAKRISHNA SREEPADA
HON'BLE MEMBER (TECHNICAL)

COUNSELS PRESENT:

For the Petitioner : Ms. Mahima Khandelwal

For the Respondent : Appeared (*through VC but name not recorded*)

ORDER

C.P (IB) No.116/BB/2018 is dismissed vide separate order.

File be consigned to Record room.

-Sd-
RADHAKRISHNA SREEPADA
MEMBER (TECHNICAL)

-Sd-
SUNIL KUMAR AGGARWAL
MEMBER (JUDICIAL)

IN THE NATIONAL COMPANY LAW TRIBUNAL, BENGALURU BENCH

*(Exercising powers of Adjudicating Authority under
The Insolvency and Bankruptcy Code, 2016)
(Through Physical Hearing/ VC Mode (Hybrid))*

CP (IB) No. 116/BB/2018

U/s. 9 of the IBC, 2016 read with Rule 6 of the IBC (AAA) Rules, 2016

IN THE MATTER OF:

APL Apollo Tubes Limited

Having its registered office at
37, Hargobind Enclave,
Vikas Marg, Delhi – 110092

- Operational Creditor/Petitioner

VERSUS

Tanisha Scaffolding (India) Private Limited

Having its registered office at
No. 650, II Floor, II Main,
2nd Phase, 7th Block, BSK III Stage,
Bengaluru – 560085, Karnataka

- Corporate Debtor/Respondent

Order delivered on: 09.10.2026

CORAM:

Shri Sunil Kumar Aggarwal, Hon'ble Member (Judicial)

Shri Radhakrishna Sreepada, Hon'ble Member (Technical)

COUNSELS PRESENT

For the Petitioner	:	Shri Rishab Singh
For the Respondent	:	Shri S K Ravi

ORDER

1. This Company Petition is filed by the Operational Creditor under Section 9 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as the "Code") read with Rule 6 of the Insolvency and Bankruptcy (Application to

Adjudicating Authority) Rules, 2016, seeking initiation of Corporate Insolvency Resolution Process (“CIRP”) against the Corporate Debtor for alleged default in payment of operational debt amounting to **₹30,43,360/-**.

2. This Adjudicating Authority had earlier, vide order dated 05.09.2019, dismissed the present petition on the ground that the Operational Creditor had failed to establish the existence of debt and default. It was observed, *inter-alia*, that the Operational Creditor had not produced purchase orders in support of the invoices, had failed to substantiate delivery and acceptance of goods, and that the petition appeared to be in the nature of a recovery proceeding rather than one for initiation of CIRP.
3. Aggrieved by the said order, the Operational Creditor had preferred an appeal before Hon’ble the National Company Law Appellate Tribunal (“NCLAT”) in TA (AT) No. 206/2021. The Hon’ble NCLAT, Chennai has set aside dismissal order dated 05.09.2019, on 11.06.2024 and remanded the matter for fresh consideration after providing an opportunity to the Corporate Debtor to file its objections and decide the petition afresh. It was also observed that in the absence of any pleadings or objections by the Corporate Debtor, the Adjudicating Authority ought not to have drawn adverse inference against the Operational Creditor rather the pleadings not controverted could be deemed to be admitted. Pursuant to the remand, the present petition is taken up for fresh consideration.
4. The brief facts of the case, as submitted by the OC, are as follows:
 - a. The Operational Creditor is a company incorporated under the provisions of the Companies Act, 1956 and is engaged in the business of manufacturing and sale of steel pipes and tubes.
 - b. The Corporate Debtor is also a company incorporated under the provisions of the Companies Act, 1956 and is engaged in the business of manufacturing and marketing of scaffolding, centering materials and other construction-related products.

- c. Upon requests made by the Corporate Debtor, the Operational Creditor had supplied steel tubes and pipes to it on various occasions. In respect of such supplies, the Operational Creditor raised invoices from time to time.
- d. The Operational Creditor has submitted that the following invoices remain unpaid:
 - i. Invoice No. 0000000721 dated 01.06.2017 for Rs 7,85,106
 - ii. Invoice No. 0000000804 dated 16.06.2017 for Rs 9,39,614
 - iii. Invoice No. 0000000102 dated 20.06.2017 for Rs 9,91,495
- e. As per the agreed terms and conditions, payment against the invoices was to be made within a period of 30 days from the date of invoice.
- f. The Operational Creditor submits that despite expiry of the stipulated period, the Corporate Debtor failed to make payment of the outstanding dues of ₹30,43,360/- (Rupees Thirty Lakhs Forty-Three Thousand Three Hundred and Sixty Only), comprising the principal amount of ₹27,16,215/- and interest amount of ₹3,27,145/-. The dates of default are 01.07.2017, 16.07.2017 and 20.07.2017.
- g. It is further submitted that the Operational Creditor made repeated follow-ups with the Corporate Debtor for payment of the outstanding dues, including email communications dated 17.07.2017 and 22.01.2018. It is stated that the representatives of the Corporate Debtor had assured payment in instalments; however, the same was not honoured.
- h. Thereafter, the Operational Creditor issued a demand notice dated 01.02.2018 under Section 8 of the Code to the Corporate Debtor, which was duly served on 05.02.2018.
- i. It is the case of the Operational Creditor that despite service of the demand notice, neither any payment was made nor any notice of dispute

was received from the Corporate Debtor within the statutory period. Accordingly, the present petition came to be filed.

5. The CD has filed its Statement of Objections on 12.09.2025 stating:

- a. At the outset, the Corporate Debtor denied existence of any transaction whatsoever as alleged by the Operational Creditor in the present petition and therefore, question of any operational debt does not arise. The Operational Creditor has approached this Authority with unclean hands and has suppressed material facts, thereby rendering the petition liable to be dismissed.
- b. The Corporate Debtor had earlier procured materials from the Operational Creditor during the period January 2017 and March 2017 on various occasions, amounting to ₹59,86,356/-, and that the said entire amount was duly paid and settled by June 2017. It is submitted that no amount remains outstanding in respect of the said transactions.
- c. It is specifically contended that no materials were procured by the Corporate Debtor from the Operational Creditor on the dates mentioned in the petition, i.e., 01.06.2017, 16.06.2017 and 20.06.2017, and that the last purchase between the parties was made on 22.03.2017. The Corporate Debtor has relied upon its ledger statement to substantiate the same.
- d. The Corporate Debtor has further contended that the invoices relied upon by the Operational Creditor are false and fabricated, and that no purchase orders were placed nor were any goods delivered pursuant to such invoices.
- e. It is also contended that the Operational Creditor has failed to produce any documentary evidence to establish delivery and acceptance of goods or the existence of any liability.

- f. The Corporate Debtor has placed reliance on judicial precedents, including the judgments of the Hon'ble Supreme Court in ***Mobilox Innovations Private Limited v. Kirusa Software Private Limited*** and ***Transmission Corporation of A.P. Ltd. v. Equipment Conductors and Cables Ltd.***, to contend that the provisions of the Code cannot be invoked as a recovery mechanism and that existence of undisputed debt is a sine qua non for initiation of CIRP.
 - g. It is further submitted that the Corporate Debtor is a solvent and going concern and does not owe any amount to the Operational Creditor. The present petition, according to the Corporate Debtor, is based on false and fraudulent claims.
 - h. The Corporate Debtor has also contended that it has not received any demand notice in Form-4 as required under Section 8 of the Code. In view of the above, the Corporate Debtor has prayed for dismissal of the present petition with costs.
6. The Operational Creditor has filed Rejoinder on 24.02.2026 stating:
- a. The Operational Creditor has submitted that the objections raised by the Corporate Debtor are misconceived, devoid of merits and are an afterthought aimed at creating a false and spurious dispute, which did not exist prior to issuance of the demand notice under Section 8 of the Code.
 - b. It is reiterated that the Operational Creditor had supplied goods to the Corporate Debtor against invoices dated 01.06.2017, 16.06.2017 and 20.06.2017 and that an amount of ₹30,43,360/- remains due and payable, comprising of principal and interest.
 - c. The Operational Creditor has relied upon its ledger statement to demonstrate the continuous business transactions between the parties and to establish that supplies were made beyond March 2017, including the invoices forming the subject matter of the present petition.

- d. The Corporate Debtor has deliberately suppressed material facts by selectively relying on transactions only up to March 2017 and omitting subsequent supplies made in June 2017. It is submitted that such suppression renders the defence of the Corporate Debtor unreliable.
- e. The demand notice dated 01.02.2018 was duly served upon the Corporate Debtor on 05.02.2018 but no reply or notice of dispute was raised within the statutory period of ten days as required under Section 8(2) of the Code. It is submitted that this position has also been recorded by the Hon'ble NCLAT.
- f. It is further submitted that the application under Section 9 is complete in all respects and is accompanied by all necessary documents, including invoices, affidavit of no dispute, bank certificate and ledger statements, thereby satisfying the requirements under Section 9(3) of the Code.
- g. The Operational Creditor has denied the contention of the Corporate Debtor that no goods were supplied or that the invoices are fabricated, stating that the invoices contain complete particulars of goods supplied and were raised in the ordinary course of business.
- h. The plea of absence of purchase orders is not sufficient to negate the existence of operational debt, particularly when the transactions are supported by invoices and ledger entries.
- i. The Operational Creditor has further submitted that the Corporate Debtor cannot be permitted to raise disputes at this belated stage, after having failed to raise any dispute prior to or within the statutory period on receipt of the demand notice.
- j. It is submitted that the defence raised by the Corporate Debtor does not constitute a bona fide pre-existing dispute and is only an attempt to evade liability.

- k. In view of the above, the Operational Creditor has prayed for admission of the petition and initiation of CIRP against the Corporate Debtor.
7. The Operational Creditor has also filed written submissions reiterating its case, inter alia, contending as follows:
- a. The operational debt of ₹30,43,360/- arises out of supplies made under invoices dated 01.06.2017, 16.06.2017 and 20.06.2017, and same remains unpaid despite repeated reminders and issuance of demand notice under Section 8 of the Code.
 - b. The demand notice dated 01.02.2018 was duly served on the Corporate Debtor on 05.02.2018 but no reply or notice of dispute was issued within the statutory period of ten days as required under Section 8(2) of the Code.
 - c. The Operational Creditor has complied with all requirements under Section 9(3) of the Code by filing invoices, affidavit of no dispute, bank certificate and ledger statements evidencing the unpaid operational debt.
 - d. The application is complete in all respects and in terms of Section 9(5) of the Code, once debt and default are established and no notice of dispute exists, the Adjudicating Authority is bound to admit the petition.
 - e. The Corporate Debtor has attempted to create a false dispute by relying on a truncated ledger limited to transactions up to March 2017, while suppressing subsequent transactions, including supplies made in June 2017 forming the subject matter of the present petition.
 - f. The defence raised by the Corporate Debtor is an afterthought and does not constitute a genuine pre-existing dispute within the meaning of Section 8(2) of the Code. Accordingly, the admission of petition and initiation of CIRP against the Corporate Debtor has been urged.
8. We have heard the learned counsels for the parties and carefully perused the material available on record.

9. The issue here is whether the Operational Creditor has established an outstanding operational debt bereft of pre-existing dispute and default to maintain the present petition under Section 9 of the Code. We also need to keep in mind the observations of Hon'ble NCLAT, while remanding the matter.
10. The scope of enquiry under Section 9 of the Code is summary in nature and does not extend to adjudication of disputed questions of fact requiring detailed evidence. In the present case, the Operational Creditor has relied upon invoices dated 01.06.2017, 16.06.2017 and 20.06.2017 to contend that goods specified therein were supplied to the Corporate Debtor and that payment in respect thereof remains outstanding. The Corporate Debtor, on the other hand, has categorically denied the very existence of the transactions forming the edifice of claim of the Operational Creditor. It is specifically contended that no goods were supplied after March 2017, that all prior transactions stood settled, and that the invoices relied upon by the Operational Creditor are false and fabricated. The Corporate Debtor has also relied upon its ledger statements to contend that no amount is due and payable.
11. So far as the transactions between the parties up to March, 2017 are concerned, they are at *ad-idem*.
12. The dispute in the context of the subject matter of the petition, raised by the Corporate Debtor, is not just denial of liability, but goes to the root of the matter, namely, whether the alleged supplies forming the basis of the claim were made at all. In this behalf, the Operational Creditor has relied upon the ledger statement maintained in the name of CD wherein the three concerned invoices are mentioned and has contended that the defence raised by the Corporate Debtor is an afterthought.
13. Faced with the word of one party against the word of opposite party, Since the invoices do not bear the signatures of CD to be discerned either as copy thereof delivered or acknowledgment of material, the initial onus to show the supply of material constituting the outstanding claim, lay on the OC. It however, did not

file either the delivery challans or other documents reflecting receipt of material by the CD or trade tax/GST returns to substantiate the version either with its rejoinder or subsequently. No contemporaneous written communication with CD is produced to draw an inference in its favour. The issue involved is very foundational as the subsistence of underlying transaction is pre-requisite to further proceed with the matter.

14. Since the goods are stated to have been supplied during June 2017 and the Value of goods has not been received necessitating filing of the present application, then the amount due should be reflected as TRADE RECEIVABLES in the Balance Sheet. To verify this, the Income Tax return accompanied by the Balance sheet was brought on record. From the Balance sheet, it was seen that the TRADE RECEIVABLES is shown to be NIL.
15. Further, no specific entry identifying the Corporate Debtor, Tanisha Scaffolding (India) Private Limited, as a debtor has been identified in the material examined.

C	Trade receivables				
	i	Outstanding for more than 6 months	i	0	
	ii	Others	ii	0	
	iii	Total Trade receivables (i + ii)	Ciii		0

16. The Income Tax returns for the corresponding years filed by the CD also do not reflect any trade payables to the OC.
17. In such a background, it would not be just to subscribe to the proposition that non-reply to a legal notice automatically tantamount to admission of its contents. (*NDMC Vs Amrit Mehta*, RSA 101/2012 decided by Hon'ble High Court of Delhi on 26.09.2016). It will otherwise appear as if the essential burden of the case is shifted to the other-side.
18. The Hon'ble Supreme Court in *Mobilox Innovations Private Limited v. Kirusa Software Private Limited* (2018) 1 SCC 353 has clearly held that if there exists

a real dispute which is not spurious, hypothetical or illusory, the application under Section 9 must be rejected.

19. Applying the above principles to the facts of the present case, we are of the considered view that the defence raised by the Corporate Debtor cannot be said to be a mere moonshine or sham defence. The contention that no transactions took place after March 2017 and that the invoices relied upon by the Operational Creditor are not backed by delivery documents to indicate the transaction having taken place, raises a plausible dispute that cannot be entertained by us while exercising summary jurisdiction under the Code. The parties although had dealt with each other earlier but their privity of contract qua the subject three invoices is not established.
20. As it does not satisfy the requirements of Section 9 of the Code, **CP (IB) No. 116/BB/2018 is hereby dismissed.**
21. This order, however, shall not preclude the Operational Creditor from availing other appropriate legal remedies that may be available.

-Sd-
(RADHAKRISHNA SREEPADA)
MEMBER (TECHNICAL)

-Sd-
(SUNIL KUMAR AGGARWAL)
MEMBER (JUDICIAL)