

IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH, COURT – 1, AHMEDABAD

ITEM No.318
C.P.(IB)/121(AHM)2022

Under Section 9 of IB, Code 2016

IN THE MATTER OF:

M.K.Aircon Systems Pvt Ltd

V/s

Kunal Structure (India) Pvt Ltd

.....Applicant

.....Respondent

ITEM No.319
IA/740(AHM)2025
in
C.P.(IB)/121(AHM)2022

Under Section Rule 11 of NCLT Rules,2016

IN THE MATTER OF:

M/s M.K Aircon Systems Pvt. Ltd

V/s

M/s Kunal Structure Pvt. Ltd

.....Applicant

.....Respondent

Order delivered on: 30/06/2026

C O R A M:

MR. SHAMMI KHAN, HON'BLE MEMBER (J)

MR. SANJEEV SHARMA, HON'BLE MEMBER (T)

COMMON ORDER
(Hybrid Mode)

The case is fixed for pronouncement of order. The common order is pronounced in the open court, vide separate sheet.

Sd/-

SANJEEV SHARMA
MEMBER (TECHNICAL)

Sd/-

SHAMMI KHAN
MEMBER (JUDICIAL)

**BEFORE THE ADJUDICATING AUTHORITY
NATIONAL COMPANY LAW TRIBUNAL,
DIVISION BENCH, COURT-I, AHMEDABAD**

CP (IB) No.121/9/AHM/2022

With

IA No.740 (AHM) of 2025

(Petition 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:

M.K. Aircon Systems Private Limited

(CIN: U2919GJ2003PTC042007)

Registered office at 1763, Joshi Vas,
B/h Navrangpura Police Station,
Navrangpura, Ahmedabad, Gujarat, - 380009

...Applicant/Operational Creditor

VERSUS

Kunal Structure (India) Private Limited

(CIN: U45200GJ2006PTC048080)

Registered office at 1205-1217,
12th Floor, Shilp Epitome, B/h Rajpath Club Road,
Ahmadabad City, Gujarat, - 380054.

...Respondent/Corporate Debtor

Order Pronounced On: 30.06.2026

C O R A M:

SH. SHAMMI KHAN, HON'BLE MEMBER (JUDICIAL)

SH. SANJEEV SHARMA, HON'BLE MEMBER (TECHNICAL)

A P P E A R A N C E:

For the Applicant/OC : Mr. Aashin Pandya, Sr. Adv. a.w.
Mr. Tirth N Bhatt. Advocate.

For the Respondent/CD : Mr. Rashesh Sanjanwala, Sr. Adv.
a.w. Mr. Vishwas K Shah, Adv. &
Mr. Dhruvin Dosani, Advocate.

ORDER
Per Bench

1. This Company Petition has been filed by M.K. Aircon Systems Pvt. Ltd. under Section 9 of the Insolvency and Bankruptcy Code, 2016 seeking initiation of CIRP against Kunal Structure (India) Pvt. Ltd. for default in payment of operational debt amounting to Rs.2,18,79,650/- including interest arising from supply of goods/services.
2. On perusal of Part-I of Form-5, it is observed that the Operational Creditor is a company incorporated under the Companies Act, having its registered office at Ahmedabad. The Petition is filed through Mr. Dharendra N. Shukla, its Director/Authorised Representative pursuant to Board Resolution placed on record with the Petition as **Annexure-II/J**.
3. On perusal of Part-II of the Form-5, shows that the Corporate Debtor is a company namely Kunal Structure (India) Private Limited incorporated on 05.04.2006 under

the Companies Act, 1956, having CIN No. U45200GJ2006PTC048080. The registered office is at 1205-1217, 12th Floor, Shilp Epitome, B/h Rajpath Club Road, Ahmadabad City, Gujarat, - 380054, with an authorized share capital Rs.5.50,00,000/- and paid-up share capital Rs.5,03,00,000/-, as per Master Data from Ministry of Corporate Affairs website which is annexed with the Petition as **Annexure-II/A Colly**.

4. On Perusal of **Part-III of Form-5**, shows that the Operational Creditor has not proposed any name for the appointment of IRP and sought the appointment of IRP by this Tribunal as per the empanelment list of IBBI made available at the time of the admission of this Petition.
5. On perusal of Part-IV of the Form-5, shows that The Operational Creditor has claimed operational debt of Rs.2,18,79,650/- from the Corporate Debtor arising from supply and installation of industrial air-conditioning equipment and related works executed at ESIC Chennai and IIT Kharagpur projects, together with interest @ 10.00% p.a. up to 24.05.2021. The date(s) of default have been worked out by the Operational Creditor and are reflected in the computation statement annexed as Annexure-II/H Colly.
6. Upon perusal of Part-IV and Part-V of Form-5, it is observed that the Operational Creditor has set out the following facts in support of the present petition: -

- 6.1 The Operational Creditor is M.K. Aircon Systems Pvt. Ltd. engaged in the business of manufacturing, supply, installation, testing and commissioning of industrial air-conditioning and HVAC systems. The Corporate Debtor had engaged the Operational Creditor for execution of works at ESIC Hospital, Chennai and IIT Kharagpur projects.
- 6.2 The Corporate Debtor issued various Purchase Orders dated 08.02.2016, 08.09.2017, 29.01.2018 and 09.05.2018 for supply, installation and execution of HVAC related works. Copies of Purchase Orders are annexed with the Company Petition as Annexure-II/C.
- 6.3 Pursuant to the aforesaid Purchase Orders, the Operational Creditor supplied materials, equipment and executed installation works at the project sites from time to time. The Corporate Debtor accepted the supplies and execution of work as evidenced from delivery notes and project records annexed with the Company Petition.
- 6.4 The Operational Creditor raised various invoices and debit notes in furtherance of the Purchase Orders for an aggregate amount of Rs.16,51,26,754/-. Copies of invoices and debit notes are annexed with the Company Petition as Annexure-II/D and copies of delivery notes are annexed as Annexure-II/E.
- 6.5 It is submitted that the Corporate Debtor made payments aggregating to Rs.14,32,47,105/- on ad-hoc

basis against several invoices. After adjustment of such payments in the ledger account, an amount of Rs.2,18,79,650/- remained outstanding and payable by the Corporate Debtor.

- 6.6 The Operational Creditor has relied upon dispatch summary reports, ledger accounts, working computation of default amount and bank account statements to establish the outstanding debt. Copies thereof are annexed with the Company Petition as Annexure-II/F, Annexure-II/G, Annexure-II/H and Annexure-II/I respectively.
- 6.7 The Operational Creditor has stated that despite completion of substantial work by 2019 and repeated reminders through e-mail communications, the Corporate Debtor failed to release the balance payment. The e-mail correspondences exchanged between the parties are annexed with the Company Petition as Annexure-II/B.
- 6.8 The Operational Creditor has contended that the disputes raised by the Corporate Debtor are subsequent assertions and are based upon routine commercial correspondence. The Operational Creditor has relied upon ***M/s Raghuvir Buildcon Pvt. Ltd. vs. Ketan Construction Ltd., C.P. (I.B.) No.57 of 2019 decided on 10.08.2020, Mobilox Innovations Private Limited vs. Kirusa Software Private Limited, (2018) 1 SCC 353*** and ***Transmission Corporation of Andhra***

Pradesh Limited vs. Equipment Conductors and Cables Limited, (2019) 12 SCC 697.

- 6.9 The Operational Creditor has further filed Additional Affidavit dated 24.05.2025 pursuant to order dated 28.03.2025 and produced a copy of complaint dated 27.11.2021 lodged before Satellite Police Station, Ahmedabad alleging offences under Sections 406, 409, 420, 506(2) and 120(B) of the Indian Penal Code, 1860 against the Corporate Debtor and its Directors. It has also stated that no FIR has been registered pursuant thereto.
- 6.10 The Operational Creditor has also filed IA No.740 of 2025 seeking permission to place additional documents on record comprising installation progress report dated 15.05.2019 and handover letters dated 14.02.2019, 18.03.2019 and 26.03.2019 to substantiate completion and handover of works at the project sites.
- 6.11 The Operational Creditor has also filed written submissions and a comprehensive convenience compilation contending that the Corporate Debtor has raised a moonshine defence only after repeated demands for payment and that the contemporaneous record establishes supply, acceptance and outstanding liability of the Corporate Debtor.
- 6.12 In view of the above narrated facts, the Operational Creditor has sought initiation of Corporate Insolvency Resolution Process against the Corporate Debtor under

Section 9 of the Insolvency and Bankruptcy Code, 2016, declaration of moratorium under Section 14, appointment of an Interim Resolution Professional and consequential reliefs under the Code,

7. That on issuance of the notice in the Company Petition and after due service of notice, the Respondent/CD has appeared and filed reply to the Company Petition on 06.12.2022 on DMS Portal and a physical copy is filed on 07.12.2022 vide Inward No. D-6300, denying various averments made in the Company Petition. The contentions of the Respondent/CD are mentioned hereunder: -

7.1 The Corporate Debtor has denied the averments made in the Company Petition except those specifically admitted and has stated that the Petition is not maintainable. It has further stated that the deponent is authorised by Board Resolution annexed as Annexure-R/1.

7.2 The Corporate Debtor has raised objections regarding maintainability and has stated that there are defects in authorisation, affidavit, vakalatnama and procedural compliances. It has further contended that the Petition was not filed in accordance with the statutory requirements.

7.3 The Corporate Debtor has disputed the amount claimed

by the Operational Creditor and has stated that the outstanding amount has not been correctly computed. It has submitted that the claim amount was increased without proper reconciliation of accounts.

- 7.4 The Corporate Debtor has stated that disputes regarding incomplete work, short supply and discrepancies in execution were raised through e-mail communications prior to initiation of insolvency proceedings. It has submitted that these disputes were ignored by the Operational Creditor.
- 7.5 The Corporate Debtor has stated that certain materials were billed but not supplied by the Operational Creditor and an amount of Rs.1,66,177/- was debited on account of such short supply. The supporting details are annexed as Annexure-R/2.
- 7.6 The Corporate Debtor has further stated that invoices were raised for various accessories and ancillary items whereas only FCU units were supplied. It has claimed debit adjustment of Rs.3,26,010/- for short supply of items and relied upon supporting documents annexed as Annexure-R/3.
- 7.7 The Corporate Debtor has also stated that the Operational Creditor claimed amounts higher than the actual goods supplied as per delivery challans. It has submitted that the difference amount of Rs.14,75,582/- was already communicated and supporting documents are annexed as Annexure-R/4.

- 7.8 The Corporate Debtor has stated that pending works, defects and incomplete execution existed at the project sites and the same were repeatedly communicated before issuance of the Demand Notice. It has therefore contended that a pre-existing dispute existed between the parties.
- 7.9 The Corporate Debtor has filed an Additional Affidavit dated 09.01.2024 and stated that it has filed Special Civil Application No.481 of 2024 before the Hon'ble High Court of Gujarat seeking deferment of proceedings of CP (IB) No.121 of 2022. A copy of the case status is annexed as Annexure-A.
- 7.10 The Corporate Debtor has further stated that it has arbitral awards aggregating to about Rs.71,83,00,000/- recoverable from National Highways Authority of India and Rajkot Municipal Corporation. Copies of relevant portions of arbitral awards and execution proceedings are annexed as Annexure-B (Colly.) and Annexure-C (Colly.) and the computation sheet is annexed as Annexure-D.
- 7.11 In IA No.740 of 2025, the Corporate Debtor has opposed the production of additional documents and stated that the installation progress report dated 15.05.2019 and handover letters dated 14.02.2019, 18.03.2019 and 26.03.2019 were already available with the Operational Creditor at the time of filing of the Company Petition and cannot be introduced after about three years.

7.12 The Corporate Debtor has relied upon ***Vidarbha Industries Power Limited vs. Axis Bank Limited, (2022) 8 SCC 352*** and has contended that the Company is a running concern with employees, ongoing projects and substantial recoverable amounts from Government entities and, therefore, the present Petition is liable to be dismissed.

8. The Operational Creditor filed written submissions on 19.03.2025 and convenience compilation on 28.04.2025 and relied upon judgments during the hearing dated 23.06.2026. The major contentions of the Operational Creditor are as follows: -

8.1 The Operational Creditor has submitted that the Purchase Orders dated 08.01.2016, 08.09.2017, 29.01.2018 and 09.05.2018 were issued by the Corporate Debtor for the supply of industrial air-conditioning equipment and, pursuant thereto, invoices, debit notes, delivery challans and ledger accounts were generated and accepted by the Corporate Debtor.

8.2 The Corporate Debtor made ad-hoc lump sum payments against several invoices, which itself establishes the existence of business transactions and acknowledgement of liability. It has further submitted that the balance amount of Rs 2,18,79,650 remained unpaid despite repeated reminders. Numerous

reminders were issued, and emails exchanged requesting payment, however, such communications were disregarded.

- 8.3 It has been contended that the corporate debtor has asserted that there is a shortfall in the supply and an instance of overbilling on certain invoices. Such disputes raised by the Corporate Debtor are subsequent assertions and are based upon routine e-mail communications seeking documents and clarifications, which do not constitute a pre-existing dispute under Section 8 of the Code.
- 8.4 The Operational Creditor has further submitted that the chronology of e-mail communications demonstrates that every dispute was raised only when payment reminders were issued and, therefore, the defence raised by the Corporate Debtor is not supported by contemporaneous evidence.
- 8.5 During the course of hearing on 23.06.2026, the Ld. Senior Counsel has relied on various authorities. The Operational Creditor has relied upon **Raghuvir Buildcon Pvt. Ltd. vs. Ketan Construction Ltd.**, C.P. (I.B.) No.57/9/NCLT/AHM/2019 with IA No.201 of 2020 and IA No.123 of 2020, wherein this Tribunal held that routine commercial correspondence cannot automatically be treated as a dispute unless it matures into an actual dispute requiring adjudication.

- 8.6 The Operational Creditor has relied upon ***Mobilox Innovations Private Limited vs. Kirusa Software Private Limited***, Civil Appeal No.9405 of 2017, (2018) 1 SCC 353, wherein the Hon'ble Supreme Court held that the Adjudicating Authority has to examine whether the dispute is genuine and not a patently feeble legal argument unsupported by evidence.
- 8.7 The Operational Creditor has relied upon ***Deepak Modi vs. Shalfeyo Industries Pvt. Ltd.***, Company Appeal (AT) (Insolvency) No.1019 of 2022, wherein the NCLAT held that unsupported allegations and afterthought defences cannot defeat insolvency proceedings where debt and default are otherwise established.
- 8.8 The Operational Creditor has further relied upon ***M/s Lumi Vietnam Joint Stock Company vs. M/s Hogar Controls India Pvt. Ltd.***, CP (IB) No.65/9/HDB/2022, wherein it was held that mere exchange of e-mails without supporting material does not constitute a dispute under Section 8 of the Code.
- 8.9 The Operational Creditor has also relied upon ***Mukesh Goel vs. Aldous Commodities Private Limited***, Company Appeal (AT) (Insolvency) No.1235 of 2023 and ***Soham Polymers Pvt. Ltd. vs. Flocksur India Pvt. Ltd.***, Company Appeal (AT) (Insolvency) No.924 of 2021, wherein it was held that a dispute raised after demand of payment and unsupported by records cannot defeat a Section 9 Petition.

- 8.10 It has further been submitted that the additional documents produced through IA No.740 of 2025, namely installation progress report dated 15.05.2019 and handover letters dated 14.02.2019, 18.03.2019 and 26.03.2019, establish completion and handover of works at the project sites.
- 8.11 It has been prayed that since the debt, default, service of Demand Notice and absence of any genuine pre-existing dispute stand established, the present Petition deserves to be admitted and CIRP be initiated against the Corporate Debtor in accordance with the Insolvency and Bankruptcy Code, 2016.
9. The Corporate Debtor filed written submissions on 20.03.2025 and 28.04.2025 on DMS Portal and filed physical copy on 20.03.2025 and 28.04.2025 vide inward diary no. D-1897 and D- 2796 and relied upon judgments during the hearing dated 23.06.2026. The submissions and judgment relied on by the Corporate Debtor are as follows: -
- 9.1 The Corporate Debtor has submitted that the present Petition under Section 9 of the Insolvency and Bankruptcy Code, 2016 is not maintainable as there existed disputes regarding incomplete work, short supply and incorrect billing much prior to initiation of insolvency proceedings.

- 9.2 The Corporate Debtor has stated that the Operational Creditor has incorrectly computed the outstanding amount and ignored deductions made on account of deficiencies in supply and execution. It has submitted that the claim amount is disputed and not crystallised.
- 9.3 The Corporate Debtor has relied upon various e-mail communications exchanged between the parties from 17.07.2019 onwards to show that defects, pending works and non-compliance were repeatedly brought to the notice of the Operational Creditor before issuance of the Demand Notice.
- 9.4 It has been submitted that payments were withheld due to incomplete execution, non-submission of completion certificates and non-rectification of defects at the project sites. It has contended that these issues constitute a pre-existing dispute under Section 8 of the Code.
- 9.5 The Corporate Debtor has further stated that it is a running concern engaged in infrastructure projects and presently employs several persons while executing multiple projects. It has submitted that insolvency proceedings should not be invoked as a substitute for recovery proceedings.
- 9.6 It has been stated that the Corporate Debtor has arbitral awards aggregating to about Rs.71,83,00,000/- recoverable from National Highways Authority of India and Rajkot Municipal Corporation and execution

proceedings have already been initiated for recovery thereof.

- 9.7 The Corporate Debtor has also stated that Special Civil Application No.481 of 2024 has been filed before the Hon'ble High Court of Gujarat seeking deferment of proceedings in the present Company Petition till disposal of execution proceedings.
- 9.8 In IA No.740 of 2025, the Corporate Debtor has opposed production of additional documents and submitted that the installation progress report dated 15.05.2019 and handover letters dated 14.02.2019, 18.03.2019 and 26.03.2019 were already available with the Operational Creditor at the time of filing of the Petition.
- 9.9 The Corporate Debtor has relied upon ***Vidarbha Industries Power Limited vs. Axis Bank Limited, (2022) 8 SCC 352***, wherein the Hon'ble Supreme Court held that while considering admission, the Adjudicating Authority may exercise discretion and may defer admission where substantial amounts are recoverable by the Corporate Debtor and other relevant circumstances exist.
- 9.10 During the hearing dated 23.06.2026, the Corporate Debtor also relied upon ***GLS Films Industries Private Limited vs. Chemical Suppliers India Private Limited***, Civil Appeal No.4019 of 2025, wherein the Hon'ble Supreme Court reiterated that insolvency proceedings cannot be used as a substitute for debt

recovery and genuine disputes must be examined before admission.

- 9.11 The Corporate Debtor has submitted that the disputes raised are supported by contemporaneous records and are neither afterthoughts nor unsupported assertions. It has contended that detailed examination of facts would be required for adjudication.
- 9.12 The Corporate Debtor has therefore submitted that the conditions prescribed under Section 9 of the Insolvency and Bankruptcy Code, 2016 are not satisfied due to the existence of a pre-existing dispute between the parties.
- 9.13 In view of the above narrated facts, the Corporate Debtor has sought dismissal of CP (IB) No.121 of 2022, rejection of IA No.740 of 2025 and refusal to initiate Corporate Insolvency Resolution Process against the Corporate Debtor.
- 10.** We have heard the submissions of the Ld. Sr. Counsel for the Applicant/Operational Creditor as well as the Ld. Sr. Counsel for the Respondent/Corporate Debtor and perused the pleadings, affidavits, written submissions, additional documents and material available on record.
- 11.** We have carefully considered the pleadings, reply, additional affidavits, IA No.740 of 2025 filed by the Operational Creditor, written submissions, convenience compilation,

oral submissions and documents placed on record. The principal issues which arise for consideration are whether there exists an operational debt, whether default has occurred, whether the present Petition is within limitation and whether there existed any pre-existing dispute between the parties prior to issuance of the Demand Notice under Section 8 of the Insolvency and Bankruptcy Code, 2016.

12. On perusal of the Company Petition, it is observed that the relationship between the parties emanates from Purchase Orders dated 08.01.2016, 08.09.2017, 29.01.2018 and 09.05.2018 issued by the Corporate Debtor for the supply of industrial air-conditioning equipment, annexed as Annexure-II/C, pursuant to which the Operational Creditor supplied HVAC equipment and executed installation works at ESIC Hospital, Chennai and IIT Kharagpur projects. The invoices, debit notes and delivery notes annexed as Annexure-II/D and Annexure-II/E indicate that commercial transactions were carried out between the parties over a substantial period.

13. The Operational Creditor has relied upon dispatch summary

reports, ledger accounts, working computation of default amount and bank account statements annexed as Annexure-II/F, Annexure-II/G, Annexure-II/H and Annexure-II/I to establish the outstanding operational debt of Rs.2,18,79,650/-. It is also not in dispute that the Corporate Debtor had made several ad-hoc payments aggregating to Rs.14,32,47,105/- during the course of business transactions.

- 14.** The Operational Creditor has further relied upon e-mail communications annexed as Annexure-II/B and contended that despite completion of work and repeated reminders, the Corporate Debtor failed to release the balance payment. It has also produced complaint dated 27.11.2021 through Additional Affidavit dated 24.05.2025 and additional documents through IA No.740 of 2025 comprising installation progress report dated 15.05.2019 and handover letters dated 14.02.2019, 18.03.2019 and 26.03.2019.
- 15.** Per contra, the Corporate Debtor has disputed the claim amount and contended that there were deficiencies in supply, incomplete execution of work, overbilling and

discrepancies in invoices. The Corporate Debtor has relied upon contemporaneous e-mail communications and supporting documents annexed as Annexure-R/2, Annexure-R/3 and Annexure-R/4 to substantiate its defence and contend that disputes existed prior to issuance of the Demand Notice.

16. The Corporate Debtor has also relied upon Additional Affidavit dated 09.01.2024. However, the pendency of Special Civil Application No.481 of 2024 by itself neither determines nor establishes the existence of a pre-existing dispute. It has further relied upon arbitral awards aggregating to about Rs.71,83,00,000/- recoverable from National Highways Authority of India and Rajkot Municipal Corporation and produced copies thereof as Annexure-B (Colly.), Annexure-C (Colly.) and Annexure-D.
17. The Operational Creditor has relied upon ***Mobilox Innovations Private Limited vs. Kirusa Software Private Limited***, Civil Appeal No.9405 of 2017, (2018) 1 SCC 353, wherein the Hon'ble Supreme Court held that the Adjudicating Authority is only required to determine

whether there exists a plausible contention requiring investigation and whether the dispute is not a patently feeble legal argument unsupported by evidence.

18. The Operational Creditor has also relied upon ***Transmission Corporation of Andhra Pradesh Limited vs. Equipment Conductors and Cables Limited***, (2019) 12 SCC 697, wherein the Hon'ble Supreme Court reiterated that insolvency proceedings are maintainable where debt and default are established and there is no genuine dispute existing prior to issuance of the Demand Notice.
19. Further reliance has been placed on *Raghuvir Buildcon Pvt. Ltd. vs. Ketan Construction Ltd., C.P. (I.B.) No.57/9/NCLT/AHM/2019, Deepak Modi vs. Shalfeyo Industries Pvt. Ltd., Company Appeal (AT) (Insolvency) No.1019 of 2022, M/s Lumi Vietnam Joint Stock Company vs. M/s Hogar Controls India Pvt. Ltd., CP (IB) No.65/9/HDB/2022, Mukesh Goel vs. Aldous Commodities Private Limited, Company Appeal (AT) (Insolvency) No.1235 of 2023 and Soham Polymers Pvt. Ltd. vs. Flocksur India Pvt. Ltd., Company Appeal (AT) (Insolvency) No.924 of 2021,*

wherein it has been held that unsupported allegations and subsequent disputes cannot defeat a Section 9 Petition.

20. The Corporate Debtor has relied upon ***Vidarbha Industries Power Limited vs. Axis Bank Limited, (2022) 8 SCC 352***, wherein the Hon'ble Supreme Court held that the Adjudicating Authority may exercise discretion while considering admission depending upon the facts and circumstances of the case. Reliance has also been placed upon ***GLS Films Industries Private Limited vs. Chemical Suppliers India Private Limited***, Civil Appeal No.4019 of 2025, wherein it was reiterated that insolvency proceedings cannot be converted into debt recovery proceedings and genuine pre-existing disputes require due consideration before admission.
21. It is settled law that the jurisdiction of this Adjudicating Authority under Section 9 of the Insolvency and Bankruptcy Code, 2016 is summary in nature and the Tribunal is not expected to adjudicate disputed questions of fact requiring detailed evidence. The Tribunal is only required to ascertain the existence of operational debt, occurrence of default and

whether a genuine dispute existed prior to issuance of Demand Notice under Section 8 of the Code.

- 22.** Therefore, the issues regarding debt, default, limitation, service of Demand Notice, admissibility of additional documents placed through IA No.740 of 2025 and existence of pre-existing dispute are required to be examined cumulatively on the basis of contemporaneous records, conduct of the parties and documents placed on record before arriving at the final conclusion regarding admission or rejection of the present Company Petition.
- 23.** Upon cumulative consideration of the pleadings, replies, additional affidavits, written submissions and documents placed on record, we find that substantial disputes existed between the parties with regard to short supply, incomplete execution of work, discrepancies in invoicing, debit adjustments and pending works at the project sites. The said disputes were communicated through e-mail correspondence prior to issuance of the Demand Notice under Section 8 of the Code.

- 24.** The Corporate Debtor has placed on record supporting documents annexed as Annexure-R/2, Annexure-R/3 and Annexure-R/4 indicating alleged short supply of materials, differences in quantities supplied and discrepancies between invoiced amounts and actual deliveries. These issues involve factual determination and reconciliation of accounts which cannot be undertaken in summary insolvency proceedings.
- 25.** We also note that the Operational Creditor itself has relied upon various e-mail communications annexed as Annexure-II/B, whereas the Corporate Debtor has relied upon contemporaneous correspondence to demonstrate pending defects, incomplete execution and unresolved issues relating to the projects. The existence of such correspondence indicates that disputes were already subsisting between the parties.
- 26.** Though the Operational Creditor has produced additional documents through IA No.740 of 2025, namely installation progress report dated 15.05.2019 and handover letters dated 14.02.2019, 18.03.2019 and 26.03.2019, the same do

not conclusively establish absence of dispute. Accordingly, IA No.740 of 2025 deserves to be allowed for the limited purpose of taking the additional documents on record. However, mere production of such documents does not displace the contemporaneous disputes raised by the Corporate Debtor.

- 27.** In ***Mobilox Innovations Private Limited vs. Kirusa Software Private Limited***, Civil Appeal No.9405 of 2017, (2018) 1 SCC 353, the Hon'ble Supreme Court held that if there exists a plausible contention requiring investigation and the dispute is not a patently feeble legal argument unsupported by evidence, the Adjudicating Authority is required to reject the Petition under Section 9 of the Code.
- 28.** We have also considered the judgments relied upon by the Operational Creditor namely *Raghuvir Buildcon Pvt. Ltd. vs. Ketan Construction Ltd., Deepak Modi vs. Shalfeyo Industries Pvt. Ltd., M/s Lumi Vietnam Joint Stock Company vs. M/s Hogar Controls India Pvt. Ltd., Mukesh Goel vs. Aldous Commodities Private Limited and Soham Polymers Pvt. Ltd. vs. Flocksur India Pvt. Ltd.* However, the

said judgments would apply only where the defence is unsupported or raised as an afterthought.

- 29.** The email communications between the parties for the period between July 2019 and September 2019 annexed as R/5 by the Corporate Debtor demonstrating incomplete work, overcharging of items, and various other issues that were raised were prior to the issue of notice in Form 3 under section 8 of the Code on 08.02.2022.
- 30.** In the present case, the disputes cannot be characterised as unsupported assertions since contemporaneous e-mail correspondence, debit adjustments and documentary records were already in existence prior to issuance of the Demand Notice. Therefore, the disputes raised by the Corporate Debtor cannot be treated as moonshine disputes.
- 31.** We have also considered ***GLS Films Industries Private Limited vs. Chemical Suppliers India Private Limited***, Civil Appeal No.4019 of 2025, wherein the Hon'ble Supreme Court reiterated that insolvency proceedings cannot be converted into debt recovery proceedings and the existence

of a genuine pre-existing dispute disentitles an Operational Creditor from invoking Section 9 of the Code.

32. We have further considered ***Vidarbha Industries Power Limited vs. Axis Bank Limited, (2022) 8 SCC 352.***

Though the said judgment arose under Section 7 of the Code, the principles laid down therein regarding judicial discretion cannot override the mandatory requirements governing a Petition under Section 9 where a pre-existing dispute is established.

33. The Insolvency and Bankruptcy Code, 2016 is not intended to adjudicate contractual disputes or serve as a substitute for recovery proceedings. Once a genuine dispute requiring detailed examination is shown to exist prior to issuance of Demand Notice, this Adjudicating Authority cannot undertake reconciliation of accounts or conduct a trial of disputed facts.

34. In view of the foregoing discussion, we hold that a genuine pre-existing dispute existed between the parties prior to issuance of the Demand Notice under Section 8 of the Insolvency and Bankruptcy Code, 2016. Since one of the

essential ingredients under Section 9 of the Code remains unsatisfied, the present Company Petition is not maintainable.

35. Accordingly, **CP (IB) No.121/9/AHM/2022** stands rejected. **IA No.740 (AHM) of 2025** stands disposed of. This order shall not preclude either party from pursuing such remedies as may be available before the appropriate forum in accordance with law.

SD

SANJEEV SHARMA
MEMBER (TECHNICAL)

—SD—

SHAMMI KHAN
MEMBER (JUDICIAL)