



IN THE NATIONAL COMPANY LAW TRIBUNAL

NEW DELHI

COURT – IV

IB/778/ND/2022

IN THE MATTER OF:

Schneider Electric India Private Limited

... Applicant

Versus

Sarkun Solar Private Limited

... Respondent

Order delivered on: 09.05.2025

CORAM:

SHRI MANNI SANKARIAH SHANMUGA SUNDARAM,

HON'BLE MEMBER (JUDICIAL)

DR. SANJEEV RANJAN,

HON'BLE MEMBER (TECHNICAL)

PRESENT:

For the Applicant : Ms. Geetali Hazarika, Adv.

For the Respondent : Mr. Sumesh Dhawan

Ms. Vatsala Kak

Mr. Raghav



ORDER

PER: DR. SANJEEV RANJAN, MEMBER (TECHNICAL)

1. This instant application was filed by Schneider Electric India Private Limited (hereinafter referred as 'Applicant'/ 'Operational Creditor') having registered office at C-56, Mayapuri Industrial Area, Phase-II, West Delhi, Delhi-110064 under Section 9 of the Insolvency and Bankruptcy Code, 2016 (for brevity 'the Code') with a prayer to initiate Corporate Insolvency Resolution Process in respect of Sarkun Solar Private Limited (Formerly known as Photon Vidyut Private Limited) (hereinafter referred as 'Respondent' or 'Corporate Debtor') for defaulting the payment of total amounting to Rs. 19,65,42,069/- (Rupees Nineteen Crores Sixty-Five Lakhs Forty Thousand and Sixty-Nine Only) inclusive of interest of 11 % p.a. to be paid by the Corporate Debtor.
2. The Respondent Company M/s. Sarkun Solar Private Limited having CIN: U40106DL2014PTC271159, incorporated on 02.09.2014 under the provisions of the Companies Act, 2013, is having its registered office situated at 510, 5th Floor, Prakash Deep, Tolstoy Marg, Central Delhi, New Delhi-110001. Since the registered office of the respondent corporate debtor is in New Delhi, this Tribunal having jurisdiction over the NCT of Delhi is the Adjudicating Authority in relation to the prayer for initiation of Corporate Insolvency Resolution Process in respect of respondent corporate debtor under sub-section (1) of Section 60 of the Code.
3. **Briefly stated the facts of the present case as averred by the Applicant/ Operational Creditor are: -**



- a) The Applicant submitted that on 20.06.2016, the parties entered into 9 separate agreements in 3 different districts on Punjab namely 50MW Suryodya Project at village Jodhpur Pakhar, Tehsil Maur, District Bhatinda, Punjab, second project was 50MW Ojas Project at Village Tamkot, Bhopal, Khayala Kalan, Tehsil Mansa & Joga, District Mansa, Punjab and third project was 50MW Sunbeam Project at Village Teona Pujarian, Tehsil Talwandi Sabo, District Bhatinda, Punjab.
- b) It is submitted that the Operational Creditor is a Contractor of the Corporate Debtor. The broad scope of work for the Projects included the following vis-a-vis AC and DC electrical Equipment's, as follows:
- i. Civil works
 - ii. Erection, Testing and Commissioning of AC and DC electrical equipment's and
 - iii. Design, Engineering, Procurement and Supply of AC and DC electrical equipment's for Project Site basis.
- c) The Applicant submitted that the 50 MW Suryodaya Project located at Village Jodhpur Pakhar, Tehsil Maur, District Bathinda, Punjab, is governed by three principal agreements. **Agreement No. PVPL/SOLAR/PBJP/200616/06** pertains to the civil works associated with AC and DC electrical equipment, with a contract value of ₹2,28,00,000/-. **Agreement No. PVPL/SOLAR/PBJP/200616/05** relates to the erection, testing, and commissioning of AC and DC electrical equipment,



valued at ₹1,89,00,000/-. Lastly, **Agreement No. PVPL/SOLAR/PBJP/200616/04** covers the design, engineering, procurement, and supply of AC and DC electrical equipment on a FOR (Free on Road) project site basis, amounting to a contract value of ₹23,29,00,000/-.

- d) The 50 MW Ojas Project located at Village Tamkot, Bhopal, Khayala Kalan, Tehsil Mansa & Joga, District Mansa, Punjab, is governed by three main agreements. **Agreement No. PVPL/SOLAR/PBTB/200616/09** pertains to the civil works of AC and DC electrical equipment, with a contract value of ₹2,28,00,000/-.

Agreement No. PVPL/SOLAR/PBTB/200616/08 involves the erection, testing, and commissioning of AC and DC electrical equipment, for a contract price of ₹1,89,00,000/-. Lastly, **Agreement No. PVPL/SOLAR/PBTB/200616/07** relates to the design, engineering, procurement, and supply of AC and DC electrical equipment on a FOR Project Site basis, with a contract value of ₹23,29,00,000/-.

- e) The 50 MW Sunbeam Project located at Village Teona Pujarian, Tehsil Talwandi Sabo, District Bhatinda, Punjab, is governed by three primary agreements. **Agreement No. PVPL/SOLAR/PBTP/200616/03** pertains to the civil works of AC and DC electrical equipment, with a contract price of ₹2,28,00,000/-.

Agreement No. PVPL/SOLAR/PBTP/200616/02 covers the erection, testing,



and commissioning of AC and DC electrical equipment, with a contract price of ₹1,89,00,000/-. Additionally, **Agreement No.PVPL/SOLAR/PBTP/200616/01** relates to the design, engineering, procurement, and supply of AC and DC electrical equipment on a FOR Project Site basis, amounting to ₹23,29,00,000/-.

- f) The Applicant submitted that the total contract value for the works awarded to the Applicant across the various project components amounted to ₹91,56,83,319/- (Rupees Ninety-One Crores Fifty-Six Lakhs Eighty-Three Thousand Three Hundred and Nineteen only).
- g) The Applicant has submitted that disputes have arisen between the parties owing to multiple delays and breaches of contractual obligations on the part of the Respondent. Despite repeated follow-ups, including reminders and meetings, the Respondent has failed to release the outstanding payments legitimately due to the Applicant under the terms of the agreements. Such conduct by the Corporate Debtor constitutes a clear breach of contract. While the Corporate Debtor, via its email dated 13.12.2017, claimed that the project was incomplete, the Operational Creditor maintains that it has duly fulfilled all its contractual obligations in entirety as per the terms agreed between the parties.
- h) It is further submitted that the Applicant consistently followed up with the Corporate Debtor, seeking release of the outstanding



dues along with the agreed interest. Notably, vide email dated 25.06.2018, the Corporate Debtor expressly acknowledged the liability and agreed to make the payment.

- i) The Applicant submitted that it issued a demand notice on 27.06.2019 to the Corporate Debtor for payment of Rs. 19,65,42,069 (Rupees Nineteen Crores Sixty Five Lakhs Forty-Two Thousand and Sixty Nine only) inclusive of interest of 11 % p.a. The demand notice was not delivered to the Corporate debtor.
- j) However, upon continued failure of the Corporate Debtor to release the outstanding sums in accordance with Clause 15 of the Agreements, the Applicant invoked the arbitration clause. It is pertinent to mention that based on consignment tracking reports, the Applicant discovered that the arbitration notice was not successfully delivered at any of the known addresses of the Corporate Debtor.
- k) Subsequently, on 11.07.2022 the Operational Creditor again issued a demand notice to the Corporate Debtor for payment of Rs. 19,65,42,069 (Rupees Nineteen Crores Sixty Five Lakhs Forty-Two Thousand and Sixty Nine only) inclusive of interest of 11 % p.a. The demand notice was also sent to the Corporate Debtor via e-mail dated 11.07.2022 at their email address available on the Ministry of Corporate Affairs website secretarialpower@gmail.com, which was delivered to the



Corporate Debtor and did not bounce back. However, there has been no response has been received by the Applicant.

4. Submissions of the Ld. Counsel appearing for the Respondent/Corporate Debtor are:

- a) That the present Reply is being filed through Sh. Govind Pathak, the authorised signatory of the Respondent Company vide Board Resolution dated 26th April, 2023.
- b) Without admitting any liability on the part of the Corporate Debtor in respect of the alleged default amounting to Rs. 19,65,42,069/- (Rupees Nineteen Crore Sixty-Five Lakhs Forty-Two Thousand and Sixty-Nine Only), it is respectfully submitted that, as per the averments made in the captioned Petition filed by the Petitioner, the purported default under Section 9 of the Insolvency and Bankruptcy Code, 2016, in relation to all three projects, is stated to have occurred during the period between April 2014 and 2017.

For the ready reference of this Hon'ble Adjudicating Authority, the relevant extract from Part-IV of the captioned Petition filed by the Applicant is reproduced over-leaf:



DATE FROM WHICH SUCH DEBT FELL

Project Name	Outstanding	Amount	Due From
50MW Sunbeam Project	Against Invoice	6,53,52,159	24.05.2017
	Retention	2,46,54,545	13.06.2017
50MW Suryodaya Project	Against Invoice	2,62,66,843	10.04.2017
	Retention	39,62,825	10.08.2017
50MW Ojas Project	Against Invoice	2,95,01,947	24.04.2017
	Retention	37,88,866	24.08.2017

It is submitted that, under the Limitation Act, 1963, the limitation period begins from the date the alleged amount became due. In the present case, the limitation commenced in 2017 and expired in 2020. However, the Demand Notice was issued only on 11.07.2022—approximately two years after the limitation period had lapsed.

- c) At the outset, it is relevant to note that the Hon'ble Supreme Court in ***B.K. Educational Services Pvt. Ltd. v. Parag Gupta & Associates, (2019) 11 SCC 633***, categorically held that the limitation period for applications under Sections 7 and 9 of the IBC is governed by Article 137 of the Limitation Act, 1963, i.e., three years from the date of default.
- d) This position was reaffirmed in ***Jignesh Shah v. Union of India, (2019) 10 SCC 750***, wherein the Court held that the right to sue accrues on the date of default, and any application filed beyond three years from such date is barred by limitation.



- e) The respondent submitted that in the present case, the Petition was filed on 23.08.2022, well beyond the three-year period from the alleged default, which occurred between 2014 and 2017. Therefore, the Petition is ex facie barred by limitation. Further, in **Vashdeo R. Bhojwani v. Abhyudaya Co-operative Bank Ltd., (2019) 9 SCC 158**, the Hon'ble Supreme Court, referring to B.K. Educational, reiterated that the limitation period commences from the date of default, and any delay beyond the prescribed period renders the application non-maintainable.
- f) That it has been contended by the Respondent that there exists a long-standing pre-existing dispute between the parties concerning the defective quality of goods and services provided by the Petitioner. The Petitioner's failure to fulfill its contractual obligations was first raised by the Respondent on **17.02.2017**, wherein concerns regarding delays in execution of work were duly communicated. Subsequently, by email dated **08.06.2017**, the Respondent specifically brought to the Petitioner's attention the persistent issues arising from faulty inverters supplied under the Agreements, which led to substantial generation and revenue losses. Despite such communication, the issues remained unaddressed by the Petitioner.
- g) It is submitted that thereafter vide email dated 24.06.2017, the Respondent again informed the Applicant of the deficiencies in the material provided by them towards the Agreement between the parties.



- h) It is further submitted that the Respondent, through multiple emails dated **03.07.2017, 03.10.2017, and 13.12.2018**, consistently raised concerns regarding the defective quality of inverters supplied by the Petitioner and requested prompt rectification. Contrary to its obligations under the Agreements, it was the Petitioner who failed to remedy the defects or act in accordance with the contractual terms.
- i) In response to the Petitioner's notice dated 26.12.2017 regarding suspension of warranty due to alleged overdue payments for the 3x50 MW Solar Power Project in Punjab, the Respondent, vide letter dated 03.01.2018, once again highlighted ongoing unresolved issues, including the need for modification/replacement of faulty inverters, system design defects, and oil leakage in transformers. Despite repeated follow-ups, the Petitioner failed to take corrective measures.
- j) It is further submitted that the Petitioner has placed reliance on the Respondent's letter dated 25.06.2018 to claim an alleged acknowledgment of debt. However, the Petitioner has selectively omitted to disclose that the said letter contains no admission of liability whatsoever. On the contrary, the Respondent merely requested the Petitioner to urgently depute a service engineer to rectify the faulty inverters at both project sites. The contents of the said communication, relied upon by the Petitioner, in fact underscore the existence of a genuine pre-existing dispute between the parties. This is squarely covered by the law laid



down in **Mobilox Innovations Pvt. Ltd. v. Kirusa Software Pvt. Ltd., (2018) 1 SCC 353**, wherein the Hon'ble Supreme Court held that if there exists a plausible dispute prior to the issuance of the demand notice, the petition under Section 9 of the IBC is not maintainable.

5. Rejoinder on behalf of Applicant/ Operational Creditor are: -

- a) It is denied that any default occurred during the period 2014–2017, as alleged. The agreements in question were executed on 20.06.2016, and the Respondent has not clarified how a default could have occurred prior to that date. Further, the Respondent has failed to specify the exact date on which the limitation period is claimed to have expired.

Without prejudice, even assuming limitation commenced in 2017, it is submitted that there was a clear acknowledgment of debt by the Corporate Debtor on 25.06.2018, as reproduced below:

“The process of signing of amendment to PPA with revised dates is going on and we expect signing by Mid July’18 and accordingly disbursement from PFC by Mid-August’18. Therefore, please be informed that the project will start by August 2018 and all the mutually agreeable amount payable to you shall be released. We once again request you to please send your service engineer for rectification/repair of faulty inverters at both sites at the earliest.”

- b) In view of the written acknowledgment of debt dated 25.06.2018, a fresh period of limitation commenced from that date in accordance with Section 18 of the Limitation Act, 1963. The



default arose when, despite such acknowledgment, the Corporate Debtor failed to make payment. Accordingly, the limitation period would have extended until 25.06.2021. Furthermore, in light of the Hon'ble Supreme Court's order dated 10.01.2022 granting exclusion of time due to the COVID-19 pandemic, the present Petition filed on 23.08.2022 is well within the extended limitation period. The Corporate Debtor, through the said communication dated 25.06.2018, expressly admitted its liability and agreed to resolve the issue, thereby deferring the limitation timeline.

- c) It has been submitted that there is no pre-existing dispute between the Petitioner and the Respondent. It is submitted that no communication was made by the Respondent after 25.06.2018 alleging defects in the Petitioner's supplies. The present defence is a clear afterthought.
- d) The Demand Notice dated 11.07.2022 was duly served via email on 13.07.2022. The Respondent failed to respond, make payment, or issue a Notice of Dispute within the prescribed 10-day period under Section 9(5)(ii)(d) of the Insolvency and Bankruptcy Code, 2016. Therefore, the Respondent is barred from raising any alleged pre-existing dispute at this stage. It is submitted that there is no letter or e-mail written by the Respondent after 25.06.2018. The respondent submitted that at best, the communications reflect routine warranty issues, which were addressed. If any genuine dispute existed, the Respondent



ought to have initiated legal proceedings or responded to the Demand Notice in a timely manner. Having failed to do so, the Respondent is estopped from alleging any dispute.

- e) The Applicant in its rejoinder submitted that the Petition fully complies with the requirements of Regulation 2B of the IBBI Regulations, 2016. The contention that the Petition is defective or lacks necessary information is misconceived and untenable. The invoices raised by the Petitioner were primarily for taxation and compliance purposes. However, the payment obligations were governed by the specific milestones set out in the contractual agreements. The agreed payment terms under the contracts were as follows:

“Clause 8- Terms of Payment in all above-mentioned agreements.

- i. 7.5 % advance against ABG to be paid by 30.06.2016.*
- ii. 82.5% against delivery of Equipment on site and submission of documents through Letter of Credit to be issued on or before 15.08.2016.*
- iii. 10% against submission of PBG and Completion certificate.”*

ANALYSIS AND FINDINGS

6. We have heard the Ld. Counsel on behalf of the Applicant/Operational Creditor and further perused the averments made in the application, reply filed by the Corporate Debtor, Rejoinder by the Applicant, Additional Affidavits presented by Operational Creditor and Corporate Debtor. Since, the registered office of the Respondent/ Corporate Debtor is in Delhi, this



Adjudicating Authority is having territorial jurisdiction as the Adjudicating Authority in relation to prayer for initiation of Corporate Insolvency Resolution Process (CIRP) under Section 9 of the Insolvency and Bankruptcy Code, 2016, against the Corporate Debtor.

7. For admission of the Section 9 application, one of the principal requirements is that there should not be any pre-existing dispute between the Operational Creditor and the Corporate Debtor before issue of the Section 8(1) notice.

8. The Hon'ble Supreme Court in ***Mobilox Innovations Private Limited vs. Kirusa Software Private Limited (Civil Appeal No. 9405 Of 2017)*** passed on 21.09.2017 has held:

“We have also seen that one of the objects of the Code qua operational debts is to ensure that the amount of such debts, which is usually smaller than that of financial debts, does not enable operational creditors to put the corporate debtor into the insolvency resolution process prematurely or initiate the process for extraneous considerations. It is for this reason that it is enough that a dispute exists 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.”

9. The abovementioned judgment has again been reiterated by the Hon’ble Supreme Court in its judgement delivered on January 04, 2023 in the matter of **Sabarmati Gas Limited vs. Shah Alloys Limited (Civil Appeal No. 1669 of 2020)** has held:

“It is enough that a dispute exists between the parties and in other words, what is to be seen is whether there was a plausible contention requiring investigation for the purpose of adjudication. Taking note of the nature of the dispute of the respondent as referred hereinbefore in respect of the claim made by the appellant, we do not find any reason to disagree with the concurrent findings of the Tribunals that there existed a ‘pre-existing dispute’ between the parties before the receipt of demand notice under Section 8, IBC. In other words, the dismissal of the application under Section 9, IBC on the ground of ‘pre-existing dispute’ cannot be held to be patently illegal or perverse. We also do not find any reason, in the facts and circumstances, to hold that the case set up by the respondent was a patently feeble legal argument. At any rate, we are not inclined to brush aside the case of the respondent as spurious. We may hasten to add here that we shall not be understood to have held that the dispute set by the respondent regarding the dues is ultimately to be upheld. Certainly, when the expression ‘pre-existing dispute’ is used it will only indicate the existence of a dispute prior to the receipt of a demand notice under Section 8, IBC, and the correctness or its truthfulness is a matter of evidence. In short, the respondent has succeeded in raising a dispute describable as ‘pre-existing dispute’. In that view of the matter once we find that the Tribunals have rightfully held that there existed a ‘pre-existing dispute’ between the parties there



cannot be an order of remand of the matter to the Tribunal for reconsideration of Section 9 application under IBC.”

- 10.** On perusal of the casefile, it is observed that the Operational Creditor has sent the first demand notice dated 11.07.2022 to the Corporate Debtor under Section 8 of the Insolvency and Bankruptcy Code, 2016 demanding payment of outstanding dues worth Rs. 19,65,42,069 (Rupees Nineteen Crores Sixty Five Lakhs Forty-Two Thousand and Sixty Nine only) inclusive of interest of 11 % p.a.
- 11.** On a perusal of Part-IV of Form 5 giving particulars of the operational debt claimed by the applicant in the instant we notice that the applicant has claimed Rs. 19,65,42,069/- (Rupees Nineteen Crores Sixty-Five Lakhs Forty Thousand and Sixty-Nine Only) inclusive of interest of 11 % P.A. to be paid by the Corporate Debtor.
- 12.** We note that the Respondent had raised concerns as early as 17.02.2017 regarding delays in project execution by the Applicant. Further, vide email dated 08.06.2017, and subsequent communications, the Respondent specifically highlighted issues relating to the substandard quality of supply fuses and faulty inverter designs provided by the Applicant. It has been stated that there had been **existence of dispute regarding the defective quality of goods and services**, well prior to the issuance of the Demand Notice dated 11.07.2022.
- 13.** Further, through an email/letter dated 03.01.2018, the Respondent informed the Applicant that it had been persistently following up for resolution of multiple technical issues, including modification of faulty



inverters, system design defects, and oil leakage. Despite these efforts, the Applicant failed to take corrective action. Instead of addressing the defects, the Applicant unilaterally suspended the warranty obligations and abandoned the project site without formally handing over the works, thereby aggravating operational disruptions and causing substantial and continuing revenue losses to the Respondent over the past seven years. As a result of the Applicant's failure to rectify the defective supplies and complete the project as per contractual obligations, the Respondent was compelled to independently procure and install replacement equipment at its own cost in order to commission and operate the project facilities.

14. The Applicant has relied upon the delinquency letter dated 06.12.2017 issued to the Respondent. However, in response, the Respondent, vide letter dated 03.01.2018, clearly highlighted multiple material defects in the supplies provided by the Applicant and apprised them of the significant losses being incurred due to faulty inverters. Furthermore, the Respondent has raised objections and communicated grievances on several occasions through email, detailing persistent technical issues and the resulting operational and financial impact. Despite this, the Applicant failed to take any remedial action and continued to raise demands for the alleged outstanding amount.

15. The Respondent/ Corporate Debtor has raised multiple issues regarding defective supplies, particularly faulty inverters causing significant losses. Despite repeated emails highlighting these defects, the Applicant failed to take corrective action and continued to demand payment of the disputed amount. This conduct reflects an attempt to misuse the insolvency



process for recovery of a contested claim, contrary to the objectives of the IBC. The existence of genuine, long-standing disputes renders the present petition liable to be dismissed.

16.In view of the observations made herein, and the judicial pronouncements, it is accordingly, hereby ordered that the application bearing CP (IB) NO. 778 OF 2022 filed by Schneider Electric India Private Limited ('Operational Creditor') under Section 9 of the Code read with rule 6(1) of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 for initiating CIRP Sarkun Solar Private Limited ('Corporate Debtor') is not maintainable and is liable to be dismissed and accordingly, the same stands **dismissed, however without cost.**

Sd/-
(DR. SANJEEV RANJAN)
MEMBER (TECHNICAL)

Sd/-
(MANNI SANKARIAH SHANMUGA SUNDARAM)
MEMBER (JUDICIAL)