

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

Company Appeal (AT) (Insolvency) No. 394 of 2025

[Arising out of the Order dated January 10, 2025, passed by the 'Adjudicating Authority' (National Company Law Tribunal, Chandigarh Bench) in 258/CHD/HRY/2022]

IN THE MATTER OF:

M/s Drilltech Engineers Pvt. Ltd.

Registered office at:

505/B, Kanara Business Centre,
Next to Everest Garden, Ghatkoper (e)
Mumbai, Maharashtra-400075
Email ID: drilltechengineers@yahoo.com

...Appellant

Versus

M/s DLF Limited

Registered Office at:

3RD Floor, Arjun Marg, DLF City,
Phase-1, Gurgaon, Haryana – 122002
Email ID: cprporateaffairs@dlf.in

...Respondent

Present:

For Appellant : Mr. P. Nagesh, Sr. Advocate with Mr. Rishabh Singh and Mr. S. Shiva, Advocates.

For Respondent : Ms. Meghna Mishra, Mr. Ankit Rajgarhia and Ms. Palak Sharma, Advocates.

O R D E R
(Hybrid Mode)

[Per: Arun Baroka, Member (Technical)]

This is an Appeal under Section 61 of the Insolvency and Bankruptcy Code, 2016 read with Rule 22 of the National Company Law Appellate Tribunal Rules, 2016 against the order dated 10.01.2025 passed by the Hon'ble National Company Law Tribunal, Chandigarh Bench in CP (IB) No. 258/CHD/I-IRY/2022. Section 9 Application was dismissed on the ground that there was a pre-existing dispute between the parties. Adjudicating Authority accepted the Corporate Debtor's defence that there were concerns

regarding the quality of work, and hence, no operational debt was due and payable It was held that this falls within the scope of Section 9(5)(ii)(d) i.e. there is an existence of a prior dispute.

Submissions of the Appellant

2. On 08.10.2021, the Corporate Debtor-DLF issued a tender for piling works at its commercial project located at 35, Patto Plaza, Panji, Goa- 403001. The Operational Creditor (M/s Drilltech Engineers Pvt. Ltd.) submitted its bid and was declared the successful bidder. Based on discussions and negotiations, a Letter of Intent (LOI) was issued on 18.11.2021 for 335 piles. The Operational Creditor mobilized plant and machinery to the site on 30.11.2021 and 06.12.2021. A formal agreement incorporating the LOI and terms and conditions was signed on 25.11.2021. The work was executed in phases. Interim and RA (Running Account) bills were raised after approval of Proforma invoices by the Corporate Debtor. The payment due date was 10 days from the date of invoice approval. On 05.03.2022, an amendment (No.- 01) was issued for 100 additional piles, of which 98 were fully completed and drilling of 2 piles was done as instructed. The entire scope of work (335 + 100 piles) was completed by 26.05.2022. On 03.06.2022 and 06.06.2022, Corporate Debtor offered an additional 16 piles. Operational Creditor declined the offer citing persistent payment defaults. On 02.07.2022, a notice under Section 8 of IBC was sent by the Operational Creditor. It was served via email and speed post. On 12.07.2022, Corporate Debtor replied with alleged frivolous and fabricated claims. On 30.07.2022, the Operational Creditor filed

a Section 9 Application under the Insolvency and Bankruptcy Code, 2016, before the NCLT, Chandigarh Bench.

3. Appellant – Operational Creditor contends that the Adjudicating Authority gravely erred in concluding that a pre-existing dispute existed between the parties at the time of issuance of the statutory demand notice under Section 8 of the Insolvency and Bankruptcy Code, 2016. The Operational Creditor had executed the assigned work diligently and to the satisfaction of the Corporate Debtor. The work carried out at the site located at 35, Patto Plaza, Panji, Goa, was inspected and duly approved by engineers representing both parties. As per Clause 69.2 of the binding agreement dated 25.11.2021, the final approval of work by engineers constituted conclusive acceptance of the same and, by extension, approval of the corresponding invoices. The Operational Creditor submitted bills only after obtaining approval on the proforma invoices, thereby complying strictly with contractual terms. The Adjudicating Authority failed to consider that these approvals negate any claim of a pre-existing dispute. Further the Corporate Debtor's claim of a dispute, it is an admitted fact that following the completion of initial and additional scope (335 + 100 piles), the Corporate Debtor, through email communications dated 03.06.2022 and 06.06.2022, assigned additional work involving 16 more piles to the Operational Creditor. Such an assignment, coming after the full execution of the primary scope of work, indicates the Corporate Debtor's continued satisfaction with the Operational Creditor's performance. No party, acting in good faith, would assign further technical work involving structural integrity, such as piling, to a contractor

whose previous performance was in dispute. This clearly contradicts the Corporate Debtor's subsequent claims of defective performance and further contradicts the assertion of a pre-existing dispute. The reply to the Section 8 notice served by the Operational Creditor was riddled with vague, concocted, and unsubstantiated allegations, raised only after the demand notice was issued on 01.07.2022. The Corporate Debtor's response, dated 12.07.2022, failed to establish any real, bona fide dispute. The timing of the response, coming only after the refusal of the additional 16-pile assignment and the issuance of the demand notice, renders the defence highly suspicious and non-genuine. Such afterthought justifications do not qualify as pre-existing disputes under the judicial precedents laid down by the Hon'ble Supreme Court, including the landmark judgment in ***Mobilox Innovations Pvt. Ltd.***

v. Kirusa Software Pvt. Ltd. The conduct of the Corporate Debtor further supports the position that there was no dispute prior to the notice. Initial payments made on earlier invoices and continued issuance of work orders serve as clear acknowledgments of debt. Such behaviour constitutes an admission of liability, as against any subsequent denial. The invoices were not only raised in accordance with contractual terms but also approved, at least partially, and honoured in part – reinforcing that the remaining unpaid invoices also stood due and payable. The agreement between the parties explicitly provides that payment for approved bills was to be made within ten days from the date of such approval. The Operational Creditor complied with all conditions, including submission of proforma invoices and obtaining requisite approvals before raising final bills. Despite this, the Corporate

Debtor defaulted on making payments within the stipulated period. Such a failure constitutes a clear contractual breach, and the same was never disputed until after the statutory notice was served. The Adjudicating Authority failed to appreciate this blatant violation of payment terms, which is the foundation of the debt under consideration. The Corporate Debtor's assertion of dispute was raised only after the Operational Creditor declined the June 2022 offer for additional piling work due to persistent delays in payment. This sequence of events clearly indicates that the so-called dispute was not only raised belatedly but was also reactionary – motivated by the Operational Creditor's decision to cease further cooperation with a non-paying client. It is a settled principle that disputes raised after issuance of a demand notice, especially when unsubstantiated and without prior communication, do not constitute a "pre-existing dispute" under the framework of the Insolvency and Bankruptcy Code.

4. The Appellant prays to set aside the impugned order dated 10.01.2025 passed by NCLT, Chandigarh Bench and admit the Section 9 Application filed by the Appellant under the Insolvency and Bankruptcy Code, 2016.

Findings and Conclusions

5. Heard counsels of both sides and also perused materials placed on record.

6. We note that the application before the adjudicating authority has been found to be non-maintainable due to pre-existing dispute between the parties. This has been challenged before us. We now proceed to see the material on

record to know whether there is a pre-existing dispute between the parties or not, and whether initiation of the CIRP against the respondent-corporate debtor is justified or not.

7. We find that the Operational Creditor – Drilltech Engineers had issued a demand notice dated 01.07.2022, which was received by the Corporate Debtor – DLF on 02.07.2022. The Corporate Debtor – DLF had issued a reply dated 12.07.2022.

8. From the materials on record we find that before the demand notice dated 01.07.2022 was issued by the Operational Creditor – Drilltech Engineers, the Corporate Debtor – DLF had already issued a Show Cause Notice (SCN) dated 21.06.2022, which is being dealt little later as per chronology of events. From the records, it can also be seen that the show cause notice had called upon the Operational Creditor to rectify the defective works and reserved its rights to recover revenue losses suffered by it.

9. Even prior to SCN, the Corporate Debtor had been corresponding with the Operational Creditor on various issues, which is noted in next few paragraphs. Through its letter dated 15.12.2021, the Corporate Debtor had brought to the notice of the Operational Creditor – M/s Drilltech Engineers Pvt. Ltd. about various issues relating to slow progress and the site protection. These issues are extracted as below:

“1. Mobilization of 4 nos Rigs 4 nos rigs was supposed to be Mobilized within 10 days from date of issue of LOI (18.11.2021) i.e, by 28 Nov 21. 3 nos Rigs with complete accessories was reached on site on 6th Dec 2021 and 4th Rig on 11th Dec 21. There is a delay of 9 days for 3 rigs & 14 days for 4th Rig. M/s Drilltech is solely

responsible for the delay. The time & cost impact due to the said delay will be informed soon.

2. Mobilization of another 2 nos Rigs - Another 2 nos rigs was supposed to be Mobilized within 20 days from date of issue of LOI (18.11.2021) i.e. by 08 Dec 21. There is no visibility on Mobilization of another 2 rigs.

3. Submission of Required compliances & Policies: Drilitech was required to required compliances and policies within 7 days from the date of issue of LOI, but the CAR policy is submitted on 8th Dec 21 & indemnity bond is still pending at M/s Drilltech end.

4. Process of Stage Payment against mobilization of Rig: The PI against mobilization of Rigs was submitted without compliances on 1st Dec. The 3 Rigs were completely mobilized on 6th Dec 21 instead of 28th Nov 21 as claimed by M/s Drilltech. The compliances ie, CAR Policy was submitted on 8th Dec 21 which was supposed to be submitted on 25th Dec 21. DLF has released the payment as an exceptional case on 9th Dec 21 without the compliances.

5. Delay in Start of Piling Works: The mobilization of 3 rigs delayed by 9 Days & 4th Rig by 14 days as mentioned above. Also, the bentonite reached at site on 6th Dec 21. As per LOI, contractor to complete 100 piles within 30 days from the date of issue of LOI ie, by 17th Dec 21. However, contractor has completed only 21 piles up to 13th Dec 2021. The asking rate to complete the 100 piles within stipulated time as per LOI is 5 piles per day, but since the inception of piling works, the rate of piling per day comes to 1.4 Piles per day which is significantly way behind the asking rate. Hence, contractor is required to submit detailed Programme to achieve the same within stipulated timeline as per LOI. Please note that DLF reserve the right to engage another contractor on risk & cost of M/s Drilltech to achieve the milestones.

6. Site Inspection: Site inspection was not done by M/s Drilltech before the submission of tender document & commercial bid. As per GCC condition no. 18 the contractor is deemed to have inspected and examined the site & its surrounding. In general. Shall be deemed to have obtained all necessary information, as to risks, contingencies and all other circumstances which may influence or affect his tender. However, based on the problem intimated by M/s Drilltech, DLF have completed 50% filling of site up to 6th Dec 21 and Workfront for 150 piles was available to the contractor. The surface condition for starting of piling work was not intimated by contractor to DLF before issue of LOI, thus any delay in this regard will solely be on contractor part. Also, date of handover of site will not be changed and will be considered as same as date of LOI.

7. Security & Lighting: As per clause 29 of the GCC, the contractor shall provide & maintain, at his cost, all lights, guards, fencing, and security when and where necessary or required by Engineer or by any duly constituted authority for the protection of works, materials, plants and equipment, including the property of the owner. M/s Drilltech has not provided security and adequate lighting at site. Hence, DLF, reserves the right to deploy the Security & Lighting at risk & cost of the contractor.

Thus, M/s Drilltech is required to take appropriate measure & also to comply with all applicable laws to finish the work within stipulated timeline as per LOI.

For your necessary action & record.”

[emphasis supplied]

10. This was replied by the Operational Creditor – Drilltech Engineers through its email dated 18.12.2021. The matter was once again taken up by the Corporate Debtor – DLF on 29.12.2021, which is extracted as below:

“With refer to trailing mail below would like to intimated you referred that still there is no action taken up at your end about to clear the Muck from site. Now its creating hindrance to continue the balance pilling work in Zone 01 & 02. Also the Pile boring & casting speed is considerably came down, affecting the overall work progress. The interim Milestone based on LOI has already been lapsed further need catch-up plan to achieve the final Milestone as declared in LOI.

Therefore, intimating you herein to deploy more vehicles to cart off the existing Muck with immediate effect, failing which DLF will deploy the agency to cart off the Muck out of site premises at your risk & cost.”

[emphasis supplied]

11. The matter was once again raised by the Corporate Debtor on 07.01.2022 in which concerns were once again raised by the Corporate Debtor, which is extracted as below:

“It is regretted to inform you that no action has been taken up till now in view of the points as stated in trailing mail below. Due to such lethargic approach at your end the following activities such as Excavation, laterite rubble soling, stone pitching for sail stabilization & balance sub-structural activities are getting delayed since no working fronts are available considering present site scenario. Your negligence towards clearing of slush/muck from

Zone 01 & 02 is now affecting the overall progress of the whole project & we are losing our targets.

In present site condition it becomes difficult to retrieve the existing laterite rubble from zone 01 & zone 02 since slush /muck is not yet cleared. Considering the above scenario, M/s Drilltech has forced DLF to do laterite filling in Zone-5 at risk and cost of M/s Drilltech.

Also if muck/slush will not be removed by M/s Drilltech in next 3 days from today, DLF will appoint another agency at risk and cost of M/s Drilltech.”

[emphasis supplied]

12. On 06.01.2022, the Corporate Debtor once again expressed its concerns as follows:

“It becomes very disappointing that you are still not responding to the points as listed below,

1-ACTION TO ACCELERATE CARTING AWAY THE MUCK FROM SITE PREMISES PARTICULAR FORM ZONE 01 & ZONE 02, IS NOT YET INITIATED IN SPITE OF CONSTANT FOLLOW-UPS

2-NO ACTION HAS BEEN TAKEN UP TILL DATE ABOUT CLEANING OF EXTERNAL ROADS ON REGULAR BASIS AS THE SAME ARE GETTING SPOILED DURING CARTING OF MUCK.

3-DISPOSAL OF CONCRETE IN INAPPROPRIATE MANNER INSIDE THE PREMISES

4-SEEPAGE OF NIGHT SOIL THROUGH THE SEPTIC TANK, TOILETS CONSTRUCTED FOR LABOURS

It has been constantly communicated to you as well as with your site team in timely manner thru mails dtd. 27th Dec 21, 29th Dec 21 & 05th Jan 22, but as on date no action has been taken to attend & conclude the same.

Now the Excavation agency is on board and ready in position to start the work. But due to the above said hindrance cited 01 the activity is getting delayed.

Expecting action at your end with immediate effect. Also you are intimated herein to make attention towards HSE aspects (refer point cited 02 to 03)”

[emphasis supplied]

13. On 12.03.2022, the Corporate Debtor once again raised the issues relating to the work which is extracted as below:

“This is to bring to your notice that, yesterday late night. 11-Mar-22 there was some heated arguments with your operator's team and engineering staff outside DLF site premises. As a result, no one including operators and engineering staff has come for the works. We have completely wasted a day towards this reason. Please note that, we cannot afford to stop the piling works at this stage and it is not expected further more. As all other activities are completely depending on piling works.

This situation is very much alarming for us, since we need to complete the entice scope of works till ground floor including piling, excavation, RCC raft, pille cap, etc. well before the forthcoming monsoon. Hence, you are required to resume work immediately without further delay. All activities including chipping of pile, building-up the under cast pile, pile integrity tests, pile dynamic tests, etc. are already far behind the completion schedule.

We expect a positive response in the above issues with immediate effect.”

[emphasis supplied]

14. On 12.03.2022, the Corporate Debtor wrote two letters, which are extracted as below:

“This is with reference to the site visit made by the geotechnical consultant on 10-Mar-22 regarding the issue of under cast piles observed in the phase 1 of the excavation area. In this connection, you are immediately requested to furnish the methodology as directed by the geotechnical consultant which has already been shared with you today.

The same shall be further shared with the consultant and take their approval for execution of the balance piles.

You are directed to furnish the method statement for the building-up under cast piles with immediate effect. You are required to deploy the resources along with the materials, etc. and complete the entire scope of under cast piles with Immediate effect. Please note here that, all further activities are very much linked with this building-up piles. Hence, any further delays will be solely attributed to you only and dealt as per the contract terms and conditions.

Also, the issue of collapse of concrete in the pile no. 420 casted on 09-Mar-22 needs the method statement as discussed with the consultants on his site visit on 10-Mar-22.

We expect a line of positive response in the above issues with Immediate effect.”

[emphasis supplied]

15. This was followed by another letter on 02.05.2022, wherein the Corporate Debtor rejected incentive request and directed to complete the entire scope of filing works as per the tender / contract specifications urgently and without fail. And since the Corporate Debtor has claimed to incur losses and was continuing to do so due to non-performance of the Contractor – Operational Creditor it claimed to reserve its rights to recover the same from the contractor – Operational Creditor. On 23.05.2022 we find another letter, wherein the Corporate Debtor wrote then that since the Operational Creditor has shown their inability to carry out such orders therefore, the Corporate Debtor is entitled to employ another contractor at the risk and cost of the Operational Creditor.

16. We find that the Corporate Debtor issued a show cause notice to the Operational Creditor on 21.06.2022, which is instructive to note as follows:

“Ref No.: DL/PP/DEPL/004

21-Jun-2022

M/s. Drilltech Engineers Pvt. Ltd.,
505-B, Kanara Business Centre,
Near Laxmi Nagar Bus Stop,
Ghatkopar (East), Mumbai-400 075.

Sub: - Piling Works at Plot # 35, Patto Plaza, Panaji,
Goa-Show Cause Notice.

Ref:- DLF Letter Dated 17-Mar-22
DLF Letter Dated 02-May-22
DLF Letter Dated 05-May-22
DLF Letter Dated 23-May-22
DLF Letter Dated 08-Jun-22

Dear Mr. Salauddin / Mr. Vivek Patel,

With reference to your email dated 20th Jun 22, all allegations and averments made in the email are strictly denied and refuted in their entirely. Nothing contained in the e-mail shall be deemed to be admitted. The e-mail by Drilltech is baseless, misleading and incorrect. Drilltech has made false allegations against DLF, despite

being fully aware that the truth is to the contrary. The machines are idle due to Drilltech inability to rectify the defective works before monsoon at its own expense.

Kindly read this letter in conjunction to our earlier correspondences as mentioned above, RA bill payments has been released only to ease the cashflow of the contractor, it doesn't mean that defective work is accepted by DLF. You were informed through various correspondences w.r.t defective work and its rectification. During discussion on 15th June-2022, owner of M/s Drilltech agreed to rectify the defective work and agreed to hold defective work cost till the time it is rectified by M/s Drilltech.

Furthermore, as per contract only those piles will be eligible for payments which will pass all necessary testing. Therefore, considering the above facts, M/s Drilltech is not eligible for further payment till the time under-cast piles are developed and new compensatory piles are done in lieu of abandoned piles by Drilltech without any cost impact on DLF.

Due to inferior quality of works, the other subsequent activities have got delayed and entire project duration has been adversely affected by 9 months, due to which DLF is incurring huge losses. The additional cost of compensatory piles to be done in lieu of abandoned piles and development of undercast pile is estimated around Rs 10.00 Crs.

In lieu of above, DLF reserves the right to recover the revenue loss attributable to the Contractor by Invoking relevant clause no 81 of GCC. Hence, M/s Drilltech is hereby advised to explain - why the relevant clause should not be exercised by DLF with justification and way forward to rectify the defective works. M/s Drilltech is once again strongly advised to do the following:

1. Undertake rectification of all defective works and confirm mobilization schedule for the same in writing within 7 working days from receipt of this letter.
2. Submit No claim certificate and NOC of RMC suppliers and other agencies.
3. Submit GST deposit proof.”

[emphasis supplied]

17. In the meantime, the Operational Creditor had sent notice dated 01.07.2022 to the Corporate Debtor vide email as well as speed post which was replied by the Corporate Debtor on 12.07.2022 and on 30.07.2022 the Operational Creditor filed an Application under Section 9 of the Code. The

Appellant-Operational Creditor – Drilltech Engineers claims that the alleged disputes were raised post facto. The Corporate Debtor had availed GST input credit on invoices, for which the work has already been performed by the Operational Creditor, but were subsequently disputed by the Corporate Debtor for evading payment. Corporate Debtor had made partial payments without protest and continued receiving services from the Appellant. Corporate Debtor had disputed its liability only before the NCLAT. The prior conduct of Corporate Debtor – DLF for approving the work, making the payments and failing to issue contemporaneous objections contradicts its own claims, proving that the alleged dispute was fabricated. The Corporate Debtor – DLF had also given additional work/contract for 165 piles on 03.06.2022/06.06, which shows that work and conduct of Operational Creditor was satisfactory. Only for that reason fresh work was offered by the Corporate Debtor. The Operational Creditor – Drilltech Engineers also contends that part payments were made even after raising so-called disputes by the Corporate Debtor. At no point in time the contract was terminated or proceedings for liquidated damages were issued. It also contends that the piles were undercast as per the letter dated 02.05.2022 and 23.05.2022 issued by the Corporate Debtor, whereas its own subsequent letters show that there is an issue of earth settlement and loose status while at the site.

18. From the materials on record and in the above facts and circumstances, we find that there is lot of communication exchanged between the two parties indicating pre-existing dispute, which cannot be ignored and which cannot be said to be moonshine or spurious and it is

much prior in time to the issuance of demand notice by the Operational Creditor – Drilltech Engineers. The final SCN dated 21.06.2022 issued by Corporate Debtor, prior to the demand notice of the Operational Creditor dated 01.07.2022 succinctly captures the pre-existing dispute. We therefore conclude that these are pre-existing disputes which cannot be adjudicated by NCLT and this need to be settled at appropriate forum. The law is very clear that as per Section 9(5)(ii)(d) of the Code, on existence of pre-existing dispute, the application is not maintainable. Furthermore, the law has been clearly laid by Hon'ble Supreme Court in ***Mobilox Innovation Pvt. Ltd. Vs. Kirusa Software Private Limited (2018) 1 SCC 353*** at para 40 held as under:

“....

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

19. The matter has been accordingly adjudicated by the NCLT, Chandigarh and Section 9 Application was dismissed with the conclusion that “*Thus, it*

is safe to conclude that a pre-existing dispute existed between the parties as the amount claimed by the Operational Creditor is disputed on the basis of earlier communication between the parties, by the Corporate Debtor in its reply to the demand notice.”

Orders

20. The Adjudicating Authority has rightly rejected the Section 9 Application. Perusal of the rival contentions indicate that there is a pre-existing dispute, which has been going on prior to the issuance of demand notice by the Operational Creditor – Drilltech Engineers. We do not find any infirmity in the orders of the Adjudicating Authority and we uphold its orders. The Appeal is therefore, dismissed. The Appellant is at liberty to pursue remedies as available to him as per law. No orders as to cost.

**[Justice Ashok Bhushan]
Chairperson**

**[Barun Mitra]
Member (Technical)**

**[Arun Baroka]
Member (Technical)**

**New Delhi.
May 01, 2025.**

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