

**NATIONAL COMPANY LAW APPELLATE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI**

Company Appeal (AT) (Insolvency) No. 36 of 2024

**[Arising out of the Impugned Order dated 30.10.2023 passed by the
Adjudicating Authority, National Company Law Tribunal, New Delhi
Bench-IV in CP (IB) No. 1105 of 2020]**

In the matter of:

Sandeep Behl

R/o – 7149, D-7, Vasant Kunj,
Vasant Vihar, Delhi- 110070

...Appellant

Versus

1. Nirmal Trading Company

Through Smt. Nirmal Kumari Kapoor
(sole proprietor)
F-10/8A Krishna Nagar, Delhi- 110051

...Respondent No.1

2. Printland Digital (India) Pvt. Ltd.

Through Mr. Rajeev Dhingra
(the Resolution Professional),
G-9, Siddhartha Building,
96- Nehru Place,
New Delhi- 110019
cirp.printland.digital@gmail.com
dhingra_fca@yahoo.com

...Respondent No.2

3. Committee of Creditors

Of Printland Digital (India) Pvt. Ltd.
At: Mavent Restructuring Services LLP,
B-29, LGF, Lajpat Nagar-III, New Delhi-110024
Plp5278@pnb.co.in ; bo123710@pnb.co.in

...Respondent No.3

Present:

For Appellant : Mr. Abhijeet Sinha Sr. Advocate with Mr. Sandeep Bisht, Mr. Divyam Garg, Advocates.

For Respondent : Mr. Geetesh Meena, Mr. Prabhu Singh, Mr. Kranti Meena, Advocates for R1.
Mr. Ankit Raj and Mr. Ali Mohammed Khan, Advocates for R3.

J U D G M E N T

(Hybrid Mode)

Per: Barun Mitra, Member (Technical)

The present appeal filed under Section 61 of Insolvency and Bankruptcy Code 2016 (**'IBC'** in short) by the Appellant arises out of the Order dated 30.10.2023 (hereinafter referred to as **'Impugned Order'**) passed by the Adjudicating Authority (National Company Law Tribunal, New Delhi, Bench-IV) in CP (IB) No. 1105 of 2020. By the impugned order, the Adjudicating Authority has admitted the Section 9 application filed by M/s Nirmal Trading Company-Operational Creditor and admitted M/s Print Land Digital Pvt. Ltd.-Corporate Debtor into the Corporate Insolvency Resolution Process (**"CIRP"** in short). Aggrieved by the impugned order, the present appeal has been preferred by the shareholder of the Corporate Debtor.

2. Coming to the brief background of the present matter, M/s Print Land Digital Pvt. Ltd.-Corporate Debtor was engaged in the digital printing business and had business relationship with M/s Nirmal Trading Company-Operational Creditor. The Corporate Debtor placed purchase orders with the Operational

Creditor- Respondent No. 1 from time to time and issued invoices for this purpose. The Operational Creditor claiming that 70 invoices issued between 31.08.2017 to 22.02.2019 remained unpaid issued a Statutory Demand Notice on 07.01.2020 under Section 8 of the IBC for an outstanding amount of Rs 1.67 Cr. including interest @18% p.a. towards Operational Debt. The Corporate Debtor sent a reply to the Demand Notice on 20.01.2020 denying any payment as due to the Operational Creditor besides and alleging that they had already disputed the outstanding amount claimed by the Operational Creditor earlier. Thereafter, the Operational Creditor filed the Section 9 application before the Adjudicating Authority which was allowed on 30.10.2023 and the Corporate Debtor admitted into the rigours of Corporate Insolvency Resolution Process. Aggrieved by the impugned order, the present appeal has been filed by the present Appellant who is the Ex-Director of the Corporate Debtor.

3. Making his submissions, Shri Abhijit Sinha, Ld. Senior Counsel for the Appellant emphatically asserted that there was no outstanding debt qua the Operational Creditor which was payable by the Corporate Debtor. Describing the debt purportedly claimed by the Operational Creditor as a 'created debt', it was submitted that the claim of Rs 1.67 Cr. raised by the Operational Creditor was based on a carry-forward entry in its ledger which was created out of forged documents and should have been disregarded by the Adjudicating Authority. It was also contended that the Operational Creditor had sent three separate Demand Notices under Section 8 of IBC and there was a variance in the list of outstanding invoices as well as the outstanding amount claimed between the

third and final demand notice vis a vis the earlier two notices. It was also added that the Corporate Debtor had replied to the earlier two Demand Notices of 18.03.2019 and 11.04.2019 by way of a consolidated Notice of Dispute on 24.04.2019 raising disputes against the claimed amount. The same pre-existing disputes was again reiterated in the Notice of Dispute dated 20.01.2020 sent by the Corporate Debtor to the third Demand Notice dated 07.01.2020. However, the Adjudicating Authority while passing the impugned order glossed over the issue of pre-existing dispute raised in the Notice of Dispute. It was further submitted that the Corporate Debtor in their reply to the third Demand Notice had squarely denied that any amount was payable by them to the Operational Creditor and that instead they were to receive refund of certain amount from the Operational Creditor for payments made as advance towards the supply of paper. Assailing the impugned order, it was pointed out that in view of the pre-existing disputes the Adjudicating Authority ought not to have admitted the Section 9 application.

4. Refuting the arguments made by the Appellant, Shri Geetesh Meena, Ld. Counsel for the Operational Creditor submitted that in the present matter, the Corporate Debtor had unequivocally admitted an outstanding amount of Rs 1.49 Cr. being due to the Operational Creditor as on 31.03.2017. This admission of debt is clear from a letter dated 31.08.2017 wherein the auditor of the Corporate Debtor while auditing the accounts sought confirmation from the Operational Creditor for an outstanding amount of Rs 1.49 Cr payable to them by the Corporate Debtor. It was further pointed out that the Corporate Debtor is trying

to escape from their legal liability under the IBC by taking recourse to illegal and malafide plea that the invoices had been fabricated by them. It was contended that the Corporate Debtor failed to put on record any communication to show that they had ever protested against the invoices raised by the Operational Creditor. Vehemently denying that the Operational Creditor had changed the invoices or had sent exaggerated and inflated invoices to the Appellant, it was contended that all payments made by the Corporate Debtor were settled by following the FIFO method and thereafter the balance principal amount stood at Rs 1.29 Cr. as on 31.03.2019. It was stoutly denied that there was any mismatch in the payment of VAT as alleged by the Corporate Debtor. This contention of mismatch was a spurious defence raised by the Corporate Debtor and this appeal was an attempt to drag on the CIRP proceedings which is evident from the fact that the RP had filed an application under Section 19 of the IBC for non-cooperation by the Appellant.

5. Having heard the rival contentions of both the parties and having seen the material on record, the short point for our consideration is whether there was any debt and default on the part of the Corporate Debtor qua the Operational Creditor and if so whether there was any pre-existing dispute surrounding the operational debt.

6. It is the case of the Appellant that the Operational Creditor had issued the first Demand Notice on 18.03.2019 demanding an outstanding principal amount of Rs. 1.35 cr along with interest. The second Demand Notice was issued on 11.04.2019 demanding an outstanding principal amount of Rs. 1.35 cr plus

interest of Rs.53.30 lakhs while the third Demand Notice of 07.01.2020 raised demand of an outstanding amount of Rs. 1.29 cr and interest amount @18% p.a. amounting Rs.37.53 lakhs for the invoices. It is the case of the Appellant that while in the first and second Demand Notices, the Operational Creditor had indicated that there were 53 unpaid invoices, in the third Demand Notice, the outstanding amount was claimed against a set of 70 invoices. Besides variance in the number of invoices, there was also a difference in the quantum of operational debt claimed by the Operational Creditor. It is also their contention that out of the 70 invoices in the third Demand Notice, the Corporate Debtor had already cleared 37 invoices. Though these payment remittances were made against specific invoices, the Operational Creditor had adjusted the payments against invoices which were not even filed with the Section 9 petition. When a specific amount was credited to the Operational Creditor against a particular invoice, the same credit entry could not have been adjusted against any other allegedly outstanding invoice. However, by ignoring this illegality, the impugned order is in the teeth of Section 59 of the Contract Act which mandates that remittances whenever made invoice specific should be adjusted against that invoice only. Submission was also pressed that the third Demand Notice of the Operational Creditor was based on forged and fabricated invoices which did not match with the D-VAT Portal information. This forgery came to the knowledge of the Appellant only on the receipt of Demand Notice. More importantly, the Corporate Debtor had replied to the earlier two Demand Notices of 18.03.2019 and 11.04.2019 by way of a consolidated Notice of Dispute on 24.04.2019 raising disputes against the claimed amount. The same pre-existing disputes was again

reiterated in the Notice of Dispute dated 20.01.2020 sent by the Corporate Debtor to the third Demand Notice dated 07.01.2020. The Ld. Sr. Counsel for the Appellant has relied on the judgment in ***Sabarmati Gas Ltd. Vs Shah Alloys Ltd. (2023) 3 SCC 229*** in which the Hon'ble Supreme Court after relying on the judgment of ***Mobilox Innovations Pvt. Ltd. Vs Kirusa Software Pvt. Ltd.*** held that once the Corporate Debtor raises a dispute regarding the dues prior to the receipt of Demand Notice under Section 8 of IBC and the correctness or the truthfulness of the dispute is a matter of evidence, the defence cannot be brushed aside as spurious.

7. Per contra, it is the contention of the Operational Creditor that when the Corporate Debtor had sent an e-mail on 21.10.2019 to the Operational Creditor attaching their ledger account for FY- 2016-17 confirming an outstanding amount of Rs 1.49 Cr. as on 31.03.2017, this is a pure case of admitted operational debt. It was pointed out that as per the ledger account of Operational Creditor an amount of Rs 1.50 Cr. was outstanding on the Corporate Debtor as on 31.03.2017 and thereafter taking into account further sales made by them to the Corporate Debtor between 01.04.2017 to 31.03.2019 amounting Rs 2.51 Cr. the total outstanding recoverable from the Corporate Debtor stood at Rs 4.01 Cr. against which the Corporate Debtor had only made part payment of Rs 2.71 Cr. only. The balance principal amount stood at Rs 1.30 Cr. as on 31.03.2019. The quarter wise sale and payment of VAT Tax to the government by the Corporate Debtor and the summary of sale from the D-VAT Portal for FY-2015-16 and 2016-17 alongwith quarter wise ledger accounts had also been made available

to the Adjudicating Authority which had no signs of any mismatch. It was also pointed out that the Corporate Debtor had received and utilized the material supplied to them by the Operational Creditor without raising any dispute relating to quality of supply. Moreover, the E-way bills also show that the material had been received by the Corporate Debtor which had been supplied against purchase orders issued by the Corporate Debtor. It was strenuously asserted that the present appeal was based on wrong allegations and false grounds to escape the liability of making good the outstanding payments of operational debt and escape the rigours of CIRP. The Operational Creditor has relied on the judgment of this Tribunal in ***Ahluwalia Contracts (India) Ltd. Vs Raheja Developers Ltd.*** in ***CA(AT)(Ins) No. 703 of 2018*** to hold that merely by disputing a claim cannot be sufficient ground to contend that Section 9 of IBC cannot be triggered.

8. At this stage we may note the observations made by the Adjudicating Authority. We find that the Adjudicating Authority has held that the issue of fabrications/falsification of documents/invoices raised by the Corporate Debtor could not be investigated by the Adjudicating Authority as it is not a Civil Court and because proceedings under IBC are summary in nature. On the authenticity of the invoices, we find that the Adjudicating Authority has observed that the invoices on record relied upon by the Operational Creditor bears the stamp of the Corporate Debtor by way of acknowledgment and also supported by E-way bills. We also notice that the Adjudicating Authority has relied on the judgment of this Tribunal in ***Naresh Sevantilal Shah Vs Malharshanti Enterprises*** in

CA(AT)(Ins) No. 415 of 2020 to hold that the cut-off date for existence of pre-existing dispute should be the date of issue of the first Demand Notice. Basis this judgment, the Adjudicating Authority has claimed that since there was no dispute raised by the Corporate Debtor prior to the date of issue of the first Demand Notice, the reply of the Corporate Debtor dated 24.04.2019 to the first and second Demand Notice cannot be accepted as proof of pre-existing dispute. The Adjudicating Authority has further taken the view that the Corporate Debtor apart from raising a bald denial has not filed any substantive material and has failed to raise any plausible contention requiring further investigation.

9. Before we dwell on the facts of the present case to analyse the sustainability of the impugned order which is under challenge, the statutory scheme with regard to filing of an application under Section 9 needs to be recapitulated. Section 8 of the IBC requires the Operational Creditor on occurrence of a default to deliver a Demand Notice for payment of unpaid Operational Debt. Section 8(2) provides that Corporate Debtor within a period of 10 days of the receipt of the Demand Notice is required to bring to the notice of the Operational Creditor existence of dispute, if any. Thus, the existence of dispute and its communication to the Operational Creditor is statutorily provided for.

10. Section 8 of the IBC reads as follows:

“Section 8: Insolvency resolution by operational creditor.- (1) An operational creditor may, on the occurrence of a default, deliver a demand notice of unpaid operational debt or copy of an invoice

demanding payment of the amount involved in the default to the corporate debtor in such form and manner as may be prescribed.

(2) The corporate debtor shall, within a period of ten days of the receipt of the demand notice or copy of the invoice mentioned in sub-section (1) bring to the notice of the operational creditor—

(a) existence of a dispute, if any, or record of the pendency of the suit or arbitration proceedings filed before the receipt of such notice or invoice in relation to such dispute;

(b) the [payment]of unpaid operational debt—

(i) by sending an attested copy of the record of electronic transfer of the unpaid amount from the bank account of the corporate debtor; or

(ii) by sending an attested copy of record that the operational creditor has encashed a cheque issued by the corporate debtor.

Explanation-For the purposes of this section, a “demand notice” means a notice served by an operational creditor to the corporate debtor demanding payment of the operational debt in respect of which the default has occurred.”

11. If the Operational Creditor does not receive payment from the Corporate Debtor or notice of the dispute under Section 8(2), he may file an application under Section 9(1) of the IBC. Section 9(1) reads as follows:

“Section 9: Application for initiation of corporate insolvency resolution process by operational creditor.- (1) After the expiry of the period of ten days from the date of delivery of the notice or invoice demanding payment under sub-section (1) of section 8, if the operational creditor does not receive payment from the corporate debtor or notice of the dispute under sub-section (2) of section 8, the operational creditor may file an application before the Adjudicating Authority for initiating a corporate insolvency resolution process.”

12. Further, Section 9(5)(ii) contemplates that Adjudicating Authority shall reject the Section 9 application, if notice of dispute has been received by the Operational Creditor or there is record of dispute in the Information Utility. Section 9(5)(ii) reads as follows:

“(5) The Adjudicating Authority shall, within fourteen days of the receipt of the application under subsection (2), by an order—

(i).....

(ii) reject the application and communicate such decision to the operational creditor and the corporate debtor, if—

(a) the application made under sub-section (2) is incomplete;

(b) there has been [payment] of the unpaid operational debt;

(c) the creditor has not delivered the invoice or notice for payment to the corporate debtor;

(d) notice of dispute has been received by the operational creditor or there is a record of dispute in the information utility; or

(e) any disciplinary proceeding is pending against any proposed resolution professional:

Provided that Adjudicating Authority, shall before rejecting an application under sub-clause (a) of clause (ii) give a notice to the applicant to rectify the defect in his application within seven days(i) of the date of receipt of such notice from the adjudicating Authority.”

13. Having noted the relevant statutory provisions, it is pertinent to point out that the Adjudicating Authority in the impugned order has taken note of the guiding principles laid down by the Hon’ble Supreme Court in **Mobilox Innovations Private Limited Vs. Kirusa Software Private Limited (2018) 1 SCC 353** particularly the need to look into the existence of pre-existing disputes between parties. It may be useful at this stage to note that in Paragraphs 33 and 51 of the **Mobilox judgement**, following has been laid down:

“...What is important is that the existence of the dispute and/or the suit or arbitration proceeding must be pre-existing i.e. it must exist before the receipt of the demand notice or invoice, as the case may be. In case the unpaid operational debt has been repaid, the corporate debtor shall within a period of the self-same 10 days send an attested copy of the record of the electronic transfer of the unpaid amount from the bank account of the corporate debtor or send an attested copy of the record that the operational creditor has encashed a cheque or otherwise received payment from the corporate debtor [Section 8(2)(b)]. It is only if,

after the expiry of the period of the said 10 days, the operational creditor does not either receive payment from the corporate debtor or notice of dispute, that the operational creditor may trigger the insolvency process by filing an application before the adjudicating authority under Sections 9(1) and 9(2)....”

51. 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.”

14. Having noticed the statutory framework of IBC and the ***Mobilox judgement***, we now come to the contention of the Operational Creditor that the Corporate Debtor had admitted an outstanding operational debt of Rs 1.49 Cr. being due to the Operational Creditor as on 31.03.2017. It has been contended that when the debt has been acknowledged by the Corporate Debtor, this was a fit case for admission of the Section 9 application. In support of their contention, the Operational Creditor has relied on a letter dated 31.08.2017 from the auditor of the Corporate Debtor which is as reproduced below:

Dear Sir or Madam:

Our auditors, S.R.Batliboi & Associates LLP, are auditing our financial statements and statement wish to obtain direct confirmation of amounts due to you as of 31st march 2017. Compare the information below with your records on that date and confirm that this information agrees with your records on that date or note the details of any discrepancies in the space provided below. Then please sign this request and return it in the enclosed reply envelope directly to our auditors.

Our records on 31st march 2017 showed Rs.1,49,71,565 as payable to you. This is not a request for payment and remittances should not be sent to S.R. Batliboi & Associates LLP.

(Emphasis supplied)

15. This contention of the Operational Creditor has been repelled by the Corporate Debtor by asserting that Section 9 application requires strict proof of debt and default. Mere communication from the auditor is not sufficient to be read as an acknowledgement of debt. Reliance has also been placed on the judgment of this Tribunal in **Gautam Sinha Vs U.V Asset Reconstruction Company Ltd.** in **CA(AT)(Ins) No. 1382 of 2019** wherein it has been held that Director's report must be seen from the audited balance sheet to make out a case of acknowledgment of debt and there is no such acknowledgment given by the Corporate Debtor. It was also contended that the invoices claimed in default were forged and fabricated invoices put up by the Operational Creditor. Buttressing their contention, it was also submitted that since the carry-forward entry in the ledger of the Operational Creditor was based on forged documents, even the Resolution Professional had not accepted the claim of the Operational Creditor.

16. The Adjudicating Authority in the impugned order has held that the contention raised by the Corporate Debtor of false and fabricated invoices is unsustainable. In arriving at its conclusion, it has held that investigation into the issues of fabrication/falsification of documents and collusion between the Operational Creditor and former disgruntled employees of the Corporate Debtor which has been raised by the Corporate Debtor are beyond the jurisdiction of the Adjudicating Authority which is not a Civil Court and has been vested only with summary jurisdiction. The Adjudicating Authority has also taken a view that it cannot delve into the exercise of recalculating of entries in the ledger especially when the invoices on record relied by the Operational Creditor carries the stamp of the Corporate Debtor besides being supported by E-way bills. We quite agree that the power and authority of the Adjudicating Authority to investigate into such disputes of forgery and fabrication of invoices is circumscribed by the summary nature of jurisdiction vested upon by it. The IBC does not contemplate adjudication of disputes relating to forgery and fabrication as that would require calling for evidence which cannot be done under IBC.

17. Be that as it may, we find that the Adjudicating Authority even after taking note that **Mobilox** judgment requires the Adjudicating Authority to examine whether there is existence of dispute between the parties, it has turned a blind eye to the notice of disputes sent by the Corporate Debtor by simply relying on the judgment of **Naresh Sevantilal Shah v. Malharshanti Enterprises** in **CA(AT)(Ins.)No. 415/2020** and discounted the notices of dispute for having been issued subsequent to receipt of the first and second Demand Notices by the

Operational Creditor. The Adjudicating Authority has taken a view that the cut-off date for considering the existence of pre-existing dispute will be the date of issue of the First Demand Notice i.e., 18.03.2019. Accordingly, it has held that reliance of the Corporate Debtor on its reply dated 24.04.2019 to the First and Second Demand Notices to prove the existence of pre-existing dispute cannot be accepted.

18. It therefore becomes necessary to examine whether the cut-off date pegged by the Adjudicating Authority in the present matter is tenable. It is an admitted fact that the Corporate Debtor had sent a combined Notice of Dispute dated 24.04.2019 in response to the First Demand Notice dated 18.03.2019 and Second Demand Notice dated 11.04.2019. Another Notice of Dispute dated 20.01.2020 was sent in response to the Third Demand Notice dated 07.01.2020.

19. For reasons of clarity, we would like to refer to the two Notices of Dispute. The first Notice of Dispute dated 24.04.2019 is as extracted below:

“Without prejudice to the rights and contentions of Our Client as available under Law, our reply to your said Notice is as under:

- 1. The demand of purported operational debt of INR 1,35,44,526 and interest is false and frivolous ex-facie. Your said Notice states that this purported demand arises out of the invoices raised by the your Client from 18.04.2017 till 22.11.2017 i.e. pertaining to the Financial Year 01.04.2017 to 31.03.2018. It is submitted that as per the audited balance sheet of Our Client for the year ending 31.03.2018, not even a single penny is payable to your Client. Hence, the demand is baseless, wrong and is vehemently denied. True copy of the audited balance sheet of Our Client for the year ending on 31.03.2018 is annexed herewith as **Annexure A** for your ready reference.*
- 2. On the contrary, as per the certificate dated 24.04.2019 of practicing Company Secretary issued on the basis of aforesaid audited balance sheet, an amount of INR 4,80,954.20,-(Rupees Four Lacs Eighty*

*Thousand Nine Hundred Fifty Four rupees and Twenty paisa only) is due from you Client as receivable (hereinafter referred as Debt). The Debt forms a part of gross amount of INR 1,89,48.375/- appearing under the head "Short Term Loan & Advances" and sub head "Unsecured, considered goods unless stated otherwise" briefed as Advance Recoverable in Cash or Kind, Hence it is amply clear that as on 31.03.2018 receivables of INR 4,80,954.20/- are pending from your Client to Our Client. True copy of the certificate dated 24.04.2019 issued by the practicing Company Secretary is annexed as **Annexure B**.*

3. *Hence, as per the said audited balance sheet of Our Client, it is apparent that your Client is not entitled to receive any payment from Our Client against the attached invoices of the period 18.04.2017 till 22.11.2017.*
4. *You are hereby called upon to forthwith withdraw the said Notice (Form 3) being defective and contrary to the records.*
5. *Your Client is advised to reconcile its accounts with those of Our Client for any further clarification."*

20. The second Notice of Dispute dated 20.01.2020 is also extracted below:

Without prejudice to the rights and contentions of Our Client as available under Law, our reply to your said Notice is as under:

*1. There is already a prior existing dispute and Our Client has specifically mentioned in its reply dated 24.04.2019 that Your Client is indebted to Our Client to an extent of INR 4,80,954,20/- as on 31.03.2018. Our Client also provided audited balance sheet for the year ending 31.03.2018 and certificate dated 24.04.2019 from a practicing company secretary to Your Client in support of the same; The said reply dated 24.04.2019 was not even disputed or replied by Your Client after its receipt. However after 9 months therefrom, now this fresh demand notice has been issued which is baseless and disputed. True copy of the reply dated 24.04.2019 is annexed as **Annexure A**.*

2. It is most important to mention here that, on the contrary, as per the audited balance sheet for the year ending 31.03.2019 as well as the ledger statement for period 01.04.2018 to 31.03.2019 of Our Client, an amount of INR 14,09,899/- (Rupees Fourteen Lakh Nine Thousand Eight Hundred and Ninety Nine only) is due from your Client as

receivable (herein referred as Credit Balance). The Credit Balance forms a part of gross amount of INR 1,31,610,91/- appearing under the head "Short Terms Loan & Advances" and sub-head "Unsecured, considered good unless stated otherwise" briefed as Advance Recoverable in Cash or Kind. Hence, on the date of issuance of said Notice, it is Your Client who is indebted to Our Client and there is already a prior existing dispute raised vide reply dated 24.04.2019, Needless to mention, the audited balance sheet is dated 29.11.2019 i.e. almost two months prior to the receipt of your said Notice. True copy of the audited balance sheet for the year ending 31.03.2019 is annexed as Annexure B. It is noteworthy that as per the ledger statement of Our Client not even a single penny is payable to Your Client. Hence, the demand is baseless, wrong and is vehemently denied. True copy of the ledger of Our Client is annexed as **Annexure C**.

3. The said Notice is false and frivolous ex-facie. Your said Notice states that this purported demand arises out of the invoices raised by your client from. 01.04.2017- 31.03.2019 i.e. pertaining to the financial year 01.04.2018 to 31.03.2019. It is necessary to mention that in first demand notice dated 11.04.2019, a ledger for period of 01.04.2017 to 31.03.2018 had been relied upon by Your Client as an annexure. In that first demand notice Your Client shared its own ledger which showed that the Invoices bearing no.GST-90, GST-096, GST-105, GST-114, GST-115, GST-133, GST- 142, GST-160, GST-161,GST-177,GST-181,GST-185,GST-193,GST-194,GST-195,GST-196,GST-206,GST-210,GST-305,GST-308,GST-312,GST-316,GST-323,GST-325,GST-328,GST-330,GST-332,GST-334,GST-335,GST-338,GST-340 were duly paid by Our Client, however now acting contrary to its own stand, Your Client is alleging the same are unpaid. This self contradictory stand of Your Client itself goes to show the baseless and concocted nature of the demand raised herein; not to mention the prior existing dispute.

7.Your Client is advised to reconcile its accounts with those of Our Client for any further clarification.”

21. When we look at the combined Notice of Dispute issued by the Corporate Debtor on 24.04.2019 as a sequel to the first and second Demand Notices issued by the Operational Creditor, it is clear that the demand of operational debt has been dubbed as “false”, “frivolous” and “baseless”. The said communication also emphasised that “not even a single penny” was payable to the Operational Creditor. Apart from denying the outstanding debt, the Corporate Debtor has pointed out that in terms of their audited balance sheet, the Corporate Debtor was not entitled to receive any payment and that on the contrary certain amount was receivable by them from the Operational Creditor. This clearly signifies a pre-existing dispute. When we have a look at the Notice of Dispute of 20.01.2020, a clear reference was made therein to the pre-existing dispute which had been communicated earlier on 24.04.2019. It was again emphasised that in terms of their audited balance sheet, it was the Operational Creditor who was indebted to the Corporate Debtor and not the other way around. Mention was also made of certain invoices which the Operational Creditor had themselves earlier admitted to have been paid by the Corporate Debtor was now shown as unpaid and that such self-contradictory and shifting stand showed clear evidence of dispute. We also notice that in both the Notice of Dispute, the Operational Creditor was advised to take up reconciliation of accounts. It is sufficient to notice that the Corporate Debtor in the reply to statutory Demand notice made a categorical statement that nothing was due and payable by them. We also do not find any material which has been placed on record to show that the dispute raised by the Corporate Debtor were controverted, contradicted or denied by the Operational Creditor at any stage.

22. The tone and tenor of both the Notice of Disputes clearly manifested existence of dispute prior to the date of the Section 8 demand notice basis which the present Section 9 application has been filed. This constitutes sufficient foundation of genuine pre-existing disputes between the two parties. The reply to demand notice captures the essence of these disputes and therefore the requirements of Section 8(2)(1)(a) stood fulfilled. The application filed by the Operational Creditor under Section 9 has been hit by Section 9(5)(ii)(d). It is well settled that in Section 9 proceeding, there is no need to enter into final adjudication with regard to existence of dispute between the parties regarding operational debt. In the present factual matrix, the defence raised cannot be viewed as moonshine, spurious, hypothetical or illusory. For such disputed operational debt, Section 9 proceeding under IBC cannot be initiated at the behest of the Operational Creditor.

23. The Adjudicating Authority therefore clearly fell in error in admitting the Section 9 application while turning a blind eye to the Notice of Disputes which clearly establishes that there were serious differences between them in the nature of real pre-existing disputes. The ratio of ***Naresh Sevantilal Shah*** judgment which has been relied by the Adjudicating Authority to set the cut-off date of the date of issue of first demand notice for taking cognisance of the notice of dispute is not applicable in the present case since in that case, the first Demand Notice had been followed by filing of a Section 9 application before the Adjudicating Authority which was dismissed on technical grounds because Operational Creditor had made an incorrect claim. In the present case, no

Section 9 application was filed after issue of first Demand Notice. Hence reliance on ***Naresh Sevantilal Shah*** judgment is misplaced because the facts therein are clearly distinguishable.

24. Even the other judgements relied upon by the Operational Creditor do not come to the aid of the Operational Creditor. In support of their contention that merely by disputing a claim cannot become a ground for triggering of Section 9 of IBC, reliance has been placed on the judgment of this Tribunal in ***Ahluwalia Contracts (India) Ltd. Vs Raheja Developers Ltd.*** in ***CA(AT)(Ins) No. 703 of 2018***. In that case, it was held that there was no pre-existing dispute since the arbitration proceeding was initiated after the issue of Demand Notice. In the present case, we find that the notice of dispute after the issue of the second demand notice as well as the third demand notice clearly signify that there was pre-existing dispute. The Respondent has also relied on judgments of the Hon'ble Delhi High Court in ***M/s Vatech Global Co. Ltd. Vs Unicorn Denmart Ltd. & Ors.*** in ***CS(OS) No. 1849 of 2015*** and ***Indian Iron and Steel Company Ltd. Vs Nada Brothers*** in ***C.S. (OS) Nos. 2290 of 1994 and 2291 of 1994***. Both these cases are CPC related matters and not IBC matters and hence their direct applicability in the facts of the present case stands clouded.

25. For the foregoing reasons, we are of the considered opinion that the Adjudicating Authority committed serious error in admitting Section 9 application in the facts of the present case. The Impugned Order dated 30.10.2023 initiating CIRP of the Corporate Debtor and all other orders pursuant to Impugned Order are therefore set aside. The Corporate Debtor is released from

the rigours of CIRP with immediate effect. The Resolution Professional shall however be paid his fees/expenses by the Operational Creditor. No costs.

[Justice Ashok Bhushan]
Chairperson

[Barun Mitra]
Member (Technical)

Place: New Delhi

Date: 08.11.2024

Abdul/Harleen