

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

Company Appeal (AT) (Insolvency) No. 1652 of 2023

**[Arising out of the Impugned Order dated 06.12.2023 passed by the
Adjudicating Authority, National Company Law Tribunal, Mumbai
Bench-IV in CP (IB) No. 678 of 2022]**

In the matter of:

Romi Datta

Shareholder of

Sahara Q Shop Unique Products Range Limited
S/o Uma Dutt Datta,
R/o House No. D-801, Residence Appt.,
Ardeecity, Sector-52,
Chakarpur(74), Gurgaon,
Chakkarpur, Haryana, 122002
Email: chandan.kumar@saharaqshop.com

...Appellant

Versus

1. Sigma Supply Chain Solutions Pvt. Ltd.

52, Trilokiya Apts. Plot No.85,
I.P Extension, Patparganj
Delhi- 110092
E-Mail: bansalandco1234@gmail.com

...Respondent No.1

2. Sahara Q Shop Unique Products Range Limited

25-28, Floor-2, Plot No.-209,
Atlanta Building Jamnalal Bajaj Marg,
Nariman Point Mumbai
Mumbai City MH 400021 IN.
Email: udaybhat2805@gmail.com

...Respondent No.2

Present:

For Appellant : Mr. Sandeep Bajaj, Mr. Devansh Jain, Ms. Vasudha Chadha, Advocates.

For Respondent : Mr. Chinmoy Pradip Sharma, Sr. Advocate with Mr. Bipul Kedia, Mr. Anupam Prakash and Mr. Kumar Anurag, Advocates for R-1.

Mr. Akshay Petkar, Mr. Pranav Shah, Mr. Vishesh Kalra, Advocates for R-2 (RP).

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 06.12.2023 (hereinafter referred to as **'Impugned Order'**) passed by the Adjudicating Authority (National Company Law Tribunal, Mumbai Bench-IV) in CP (IB) No. 678 of 2022. By the impugned order, the Adjudicating Authority has admitted the Section 9 application filed by the Operational Creditor and admitted the Corporate Debtor into the rigors of Corporate Insolvency Resolution Process (**"CIRP"** in short). Aggrieved by the impugned order, the present appeal has been filed by the shareholder of the Corporate Debtor.

2. The brief facts of the case which are necessary to be considered for deciding the matter are as outlined below:

- The Corporate Debtor- Sahara Q Shop Unique Products Range Limited had entered into Service Agreement with Sigma Supply Chain Solutions

Pvt. Ltd.-Operational Creditor for the purpose of handling, storage, maintenance, administration, distribution and arrangement of the goods of the Corporate Debtor kept in the warehouses at various locations within the country.

- The Operational Creditor provided requisite services in terms of the Service Agreement to the Corporate Debtor and issued invoices from time to time. The Corporate Debtor had also made payments from time to time.
- The Operational Creditor sent e-mails to the Corporate Debtor regarding outstanding amounts due and payable by the Corporate Debtor. The Operational Creditor claiming that the outstanding amount remained unpaid issued a Demand Notice on 25.02.2020 under Section 8 of the IBC to the Corporate Debtor demanding payment of Rs 4.02 Cr including interest.
- The Corporate Debtor sent a Notice of Dispute on 07.03.2020 denying their liability besides claiming that there were pre-existing disputes between the parties.
- The Operational Creditor filed a Section 9 application against the Corporate Debtor on 28.12.2021 claiming an amount of Rs 1.75 Cr as due and payable by the Corporate Debtor including interest @18% per annum. The Part-IV of the Section 9 application reflected the date of default to be 23.03.2017.
- The Adjudicating Authority after considering the matter has admitted the Section 9 application.

- Aggrieved by the fact that the Adjudicating Authority had not taken into account the pre-existing disputes between the parties while admitting the Section 9 application, the impugned order has been assailed by the shareholder of the Corporate Debtor.

3. Making his submissions, Shri Sandeep Bajaj, the Ld. Counsel for the Appellant submitted that the Adjudicating Authority while admitting the Section 9 application had failed to take into account the existence of pre-existing disputes between the Corporate Debtor and the Operational Creditor. It was contended that the pre-existing disputes stem from the Operational Creditor acting in complete contravention of the terms of the Service Agreement much prior to issue of Section 8 demand notice. Attention was adverted to Clause 4 of the Service Agreement which provided that the ownership of the stocks in the warehouses lied solely and exclusively with the Corporate Debtor and that the Operational Creditor was only a handling/distribution agent of the stock and therefore held the stock in trust on behalf of the Corporate Debtor. However, acting in violation of this clause, the Operational Creditor had denied the access of the warehouse to the Corporate Debtor. It was also submitted that the Operational Creditor had illegally withheld the assets of the Corporate Debtor lying in the various warehouses causing substantial financial losses to the Corporate Debtor. Elaborating further on the pre-existing disputes, it was also submitted that in breach of Clause 3B.9 of the Service Agreement, the Operational Creditor had failed to grant access to the agents of the Corporate Debtor for carrying out physical verification of inventory at the Kolkata warehouse even after having assured facilitation of the physical verification. It

was further submitted that the Operational Creditor had failed to accede to the request made by the Corporate Debtor on 22.04.2015 to resume operations across all the warehouses.

4. It is also the contention of the Appellant that though the Operational Creditor was holding the stock of the Corporate Debtor in trust and was a handling and distribution agent, it wrongfully sold stocks valued at Rs 2.65 Cr. without the knowledge and consent of the Corporate Debtor. The Corporate Debtor had also notified the Operational Creditor vide their e-mail dated 22.09.2016 that they would debit the amount of Rs 2.65 Cr. in their books of account on account of illegal selling of stocks belonging to the Corporate Debtor by the Operational Creditor. In support of their averment it was pointed out that besides notifying the Operational Creditor on 22.09.2016, the Corporate Debtor had adjusted the amount of Rs 2.65 Cr in its ledger account by a debit entry and that this debit entry was duly verified and confirmed by the statutory auditor. This debit entry of Rs 2.65 Cr clearly evidences pre-existing dispute.

5. It is also submitted that in the Notice of Dispute dated 07.03.2020, the Corporate Debtor had denied the outstanding amount besides notifying the Operational Creditor about the pre-existing dispute. This notice of dispute has also been acknowledged by the Operational Creditor in their affidavit under Section 9 of the IBC. Hence when the Operational Creditor had himself acknowledged pre-existing dispute, the Adjudicating Authority ought to have dismissed the Section 9 application at the very threshold when the Section 9 application was filed. It was also asserted that the impugned order has failed to

take notice of the existence of pre-existing dispute and is liable to be set aside on this ground alone.

6. It was also added that the Section 9 application was filed by the Operational Creditor in complete contravention of the settled proposition of law that Section 9 application cannot be used for the purposes of debt recovery. It was also submitted that contemporaneous record clearly evidences existence of real and plausible disputes between the parties which in itself constituted sufficient ground for rejection of the Section 9 application. Further, it was contended that if the impugned order is allowed to be sustained, it would unjustly subject a solvent and financially viable company into CIRP which would go against the objective of the IBC which is to revive a Corporate Debtor and not subject a Corporate Debtor to its death.

7. Refuting the contentions of the Appellant, Shri Chinmoy Pradip Sharma, the Ld. Sr. Counsel for the Respondent-Operational Creditor submitted that the ground of pre-existing dispute raised by the Corporate Debtor is simply a ruse to escape their liability of paying the debt owed by them to the Operational Creditor. It was asserted that the Corporate Debtor had clearly acknowledged their debt in their letter dated 22.04.2015 in which they had requested further time to make payments as they were facing financial difficulty. It was also mentioned that the Corporate Debtor had raised allegations against them of having misappropriated goods and illegally sold the stocks of the Corporate Debtor as an after-thought only after they received various e-mails from the Operational Creditor calling upon them to pay the outstanding dues.

8. Submission was pressed that the Corporate Debtor had continued their business activity with the Operational Creditor even after making allegations that the Operational Creditor had misappropriated their goods. Further, the Corporate Debtor had made payments to the Operational Creditor till 23.03.2017 which date is after the allegations made by the Corporate Debtor against the Operational Creditor for misappropriation of goods. It is the contention of the Operational Creditor that it remains unexplained as to why the Corporate Debtor had not filed any legal proceeding against the Operational Creditor for the illegal selling of goods. It was also pointed out that the Adjudicating Authority had sought explanation from the Corporate Debtor as to how the alleged misappropriation of goods had been dealt in their books of account. The Appellant had submitted two ledger statements and had changed the entry belatedly in the new detailed ledger which clearly indicates that the Corporate Debtor had manipulated their accounts to match the amount of goods that were allegedly misappropriated. This shows that the financial record produced by the Corporate Debtor are manipulated and entries have been planted in the books of account belatedly. It has also been contended that the Corporate Debtor has been in financial difficulty and unable to pay its debt since 2015 and is not a financially solvent company. The Corporate Debtor's own letter dated 22.04.2015 had not only admitted the financial difficulties faced by them but also requested time for payment of debt. It is also contended that Respondent No. 2 had issued cheques towards payment of outstanding debt which were dishonoured. Thus, it was asserted that the defence raised by the Corporate Debtor is a spurious defence.

9. We have duly considered the arguments advanced by the Learned Counsel for both the parties and perused the records carefully.

10. The moot point for our consideration is whether payment to the Operational Creditor was due and payable by the Corporate Debtor, and if so, whether any default thereto was committed by the Corporate Debtor and whether the said operational debt exceeds the prescribed threshold level and is undisputed debt.

11. The landmark judgement of the Hon'ble Supreme Court in ***Mobilox Innovations Pvt. Ltd. Vs. Kirusa Software Private Limited (2018) 1 SCC 353*** has laid down the test for the Adjudicating Authority to be applied while adjudicating an application under Section 9, the relevant excerpts of which are as extracted:-

“34. Therefore, the adjudicating authority, when examining an application under Section 9 of the Act will have to determine:

(i) Whether there is an “operational debt” as defined exceeding Rs. 1 lakh? (See Section 4 of the Act)

(ii) Whether the documentary evidence furnished with the application shows that the aforesaid debt is due and payable and has not yet been paid? and

(iii) Whether there is existence of a dispute between the parties or the record of the pendency of a suit or arbitration proceeding filed before the receipt of the demand notice of the unpaid operational debt in relation to such dispute?

If any of the aforesaid conditions is lacking, the application would have to be rejected. Apart from the above, the adjudicating authority must follow the mandate of Section 9, as outlined above, and in particular the mandate of Section 9(5) of the Act, and admit or reject the application, as the case may be, depending upon the factors mentioned in Section 9(5) of the Act.”

12. We now proceed to examine whether the first two tests laid down by ***Mobilox judgment supra*** of operational debt exceeding the threshold level having become due and payable but not yet paid is applicable in the present case.

13. The Operational Creditor has predicated his claim of operational debt as due and payable by placing on record a letter dated 22.04.2015 and an email dated 07.03.2016 to substantiate that the Corporate Debtor had clearly admitted the debt qua the Operational Creditor. It has been asserted by the Operational Creditor that Corporate Debtor had not only clearly acknowledged their debt in their letter dated 22.04.2015 but had requested further time to make payments as they were facing financial difficulty. The Adjudicating Authority has taken cognisance of these correspondences in the impugned order to conclude that there is evidence of admission of liability on the part of the Corporate Debtor which is as reproduced below:

“4. This bench has perused the documents and pleadings available on record and considered the arguments of both the sides.

4.1. As per the material on record this Bench finds that, the Operational Creditor has placed on record a letter dated 22.04.2015 and email correspondence dated 07.03.2016 which clearly shows admission of liability on the part of Corporate Debtor. The extract of the letter dated 22.04.2015 and email correspondence dated 07.03.2016 is reproduced below:

i. Letter dated 22.04.2015. The relevant extract is reproduced below:

“It has been the constant endeavour of Sahara Q Shop Unique Products Range Limited, thereafter referred to as “the company” to pay service charges to its vendors timely. However, due to the ongoing unprecedented precarious situation owing to the present litigation pending at the Hon’ble Supreme Court of

India, the entire Sahara group is facing financial challenges in meeting their financial commitments timely across India and Sahara Q Shop Unique Products Range Limited is no exception in such condition.”

“Indeed, the Company in an effort to discharge its liabilities towards payment of your payable outstanding to the tune of Rs. 1.76 Cr One Crores & Seventy-Six lacs) (approx) as on February 2015 has paid a sum of Rs. 15 lacs (Fifteen Lacs) In January 2015 and Rs. 11 Lacs (Eleven Lacs) on 23.04.2015 but you have intentionally neglected and failed to allow the movement of the Company's stock for sale and further resorted to the means of extortion by illegally holding our-stocks-and documents at ransom in lieu of your outstanding dues. Please note that your act of exercising lien over the stocks kept therein is illegal, mischievous and contrary to the terms of the agreement and law. It is highly arbitrary and illegal on your part to withhold the Inventory worth 10 Crores, collectively at five warehouses, as against the outstanding of Rs. 1.76 Cr. (One Cr. Seventy-six lac) only, which is nothing but a sheer case of criminal breach of trust.”

“Despite the fact that the stock lying at our various warehouses has worth more than what is actually due towards you, the Company has taken this initiative to pay of its debts and discharge its liability towards you. It is stated that in the event of failure to do so the Company shall incur huge losses which in all fairness, the Company shall be constrained to debit to your accounts to that extent.”

ii. Email Correspondence dated 07.03.2016. The relevant extract is reproduced below:

“There is a dire need of conducting the physical Inventory (PI) for assessing the quantity stock value of Sahara's product as on date, which are lying at your warehouse in Kolkata in order to sale for the realization of capital. Certainly, as concurred by Mr. Romie Dutt (CEO) also, the amount to be so realised will be utilised towards the clearance of the dues of the vendor with you being on the priority.”

This bench notes that the contents of the emails cited supra are enough to establish admission of liability by the Corporate Debtor. Moreover, the Corporate Debtor has also paid amount of Rs. 15 lakhs in January 2015 and Rs. 11 Lakhs on 23.04.2015 towards outstanding dues. This bench further observes that, the pre-existing dispute raised by the Corporate Debtor is just a way to escape paying of the legitimate dues owed to the Operational Creditor. Various payments were received by the Corporate Debtor which are reflected in the ledger account maintained by the Operational Creditor even after alleging that goods worth Rs. 2.65 Crores were misappropriated by the Operational Creditor. Further the Corporate Debtor has placed no evidence on record to support his defence. In that view of the matter, this bench is of the considered view that plea raised by the Corporate Debtor has no substance.

(Emphasis supplied)

14. We notice that the Adjudicating Authority after noting the above admissions made by the Corporate Debtor has observed that the same amounts to be a clear acknowledgment of debt of Rs 1.76 cr being due and payable. It is equally pertinent to note that the letter of 22.04.2015 further explains the financial challenges and precarious situation arising out of ongoing litigations faced by the Corporate Debtor which has led to their outstanding dues in the payment of service charges to their vendors despite all their endeavours to pay off these dues in a timely manner. The email of 07.03.2016 also contains an admission on the part of the Corporate Debtor of the need to clear the dues of the Operational Creditor on priority by resorting to sale of stock lying in the Kolkata warehouse.

15. In the attendant facts and circumstances, no error was committed by the Adjudicating Authority in holding that the Corporate Debtor has duly admitted

the outstanding debt and default which is a valid and proper admission in the eyes of law.

16. This now brings us to the issue as to whether there is existence of dispute between the parties to satisfy the third test laid down in the ***Mobilox judgement***.

17. It is the case of the Corporate Debtor that their letter of 22.04.2015 clearly recorded that the exercise of lien over the stocks kept in the warehouses by the Operational Creditor was contrary to the terms of the agreement and that it was highly arbitrary and illegal on their part to withhold inventory worth Rs.10 Cr. It was emphatically asserted that the Operational Creditor was only a handling and distribution agent of the stock in terms of the Service Agreement between them and that the proprietorship over the said goods/stock belonged to the Corporate Debtor. However, acting in breach of the Service Agreement, the Operational Creditor had denied the access of the warehouse to the Corporate Debtor; illegally withheld the assets of the Corporate Debtor lying in the various warehouses besides preventing movement of goods and resumption of their operations across all the warehouses causing substantial financial losses to the Corporate Debtor. It was also submitted that the Operational Creditor had denied access to the agents of the Corporate Debtor for carrying out physical verification of their inventory at the Kolkata warehouse even after having assured facilitation of the physical verification. It was further contended that the Operational Creditor had wrongfully sold stocks valued at Rs 2.65 Cr. without the knowledge and consent of the Corporate Debtor and therefore the Corporate Debtor had notified the Operational Creditor vide their e-mail dated 22.09.2016

that they would debit the amount of Rs 2.65 Cr. in their books of account. In support of their averment, it was pointed out that besides notifying the Operational Creditor on 22.09.2016, the Corporate Debtor had adjusted the amount of Rs 2.65 Cr in its ledger account by a debit entry and that this debit entry was duly verified and confirmed by the statutory auditor. It was admitted by the Ld. Counsel for the Appellant that the Adjudicating Authority had sought clarifications regarding the ledger filed earlier following which a corrected detailed ledger was placed before the Adjudicating Authority on 05.07.2023. It was submitted that the corrected ledger had to be issued since errors had crept into their ledger owing to migration of data from SAP-ERP software to Tally. This fact of error caused by data migration has also been clarified in the statutory auditor's certificate dated 05.08.2023. This debit entry of Rs 2.65 Cr clearly evidenced pre-existing dispute which the Adjudicating Authority had failed to appreciate while admitting the Section 9 application. On the allegation raised by the Operational Creditor as to why Corporate Debtor had not initiated any action against the Operational Creditor for illegal selling of stocks, it was clarified that since the Corporate Debtor had already been admitted into CIRP in a separate and parallel Section 9 proceeding which had led to imposition of moratorium under Section 14 of the IBC, the Corporate Debtor had been legally precluded from initiating/continuing any proceeding against the Operational Creditor.

18. Per contra, it is the contention of the Respondent that they had not restricted access of the Corporate Debtor to the warehouse. As per the Service Agreement entered between the parties, the warehouses were owned by the third parties and were managed by the Operational Creditor on behalf of the Corporate

Debtor. There were outstanding amounts due on behalf of the Corporate Debtor to certain third parties/warehouse owners which is why the access was restricted by the third parties/warehouse owners. It was also pointed out that physical inspection was concluded by the officials of Corporate Debtor at Kolkata warehouse on 08.03.2016 and the physical inspection of stocks was finally valued at Rs 15 lakhs and the Corporate Debtor had agreed to adjust this amount after sale of stocks against the total outstanding dues of Rs 4 Cr. This fact is corroborated by the email correspondence sent by the Corporate Debtor on 07.03.2016 in which it was clearly stated that the amount to be so realised will be utilised towards the clearance of the dues of the vendor with the dues of the Operational Creditor being treated on the priority. It was also pointed out that the Adjudicating Authority had sought explanation from the Corporate Debtor as to how the alleged misappropriation of goods by the Operational Creditor had been dealt in their books of account. The Appellant in their explanation proffered to the Adjudicating Authority had submitted two ledger statements and belatedly changed the entry in the new detailed ledger. As the financial records produced by the Corporate Debtor were manipulated, the Adjudicating Authority had rightly not been persuaded to accept the reasonings adduced by the Corporate Debtor to justify the alleged misappropriation of goods.

19. Further refuting the contentions of the Appellant, it was submitted by the Operational Creditor that the Corporate Debtor had raised these allegations against them of having misappropriated goods and illegally sale of stocks subsequent to having addressed several e-mails calling upon the Corporate

Debtor to pay the outstanding amount of service charges. It was stoutly contended that the allegation of illegal sale of stocks is unfounded which explains why the Corporate Debtor had not initiated any action or filed any criminal complaint against the Operational Creditor. Further the very fact that the Corporate Debtor had continued their business transactions with the Operational Creditor even after making allegations of misappropriation of goods shows that the allegations were bogus and has been raised to merely escape the liability of making payment. Furthermore, the Corporate Debtor had continued to make payments to the Operational Creditor till 23.03.2017 well after making allegations against the Operational Creditor for misappropriation of goods which shows that the allegations are false and imaginary and not genuine. It was vehemently argued that the defence raised by the Corporate Debtor is a bogey which has been trumped up to cover their precarious financial position and inability to pay their admitted dues.

20. When we look at the impugned order, we find that the Adjudicating Authority has accorded this subject thoughtful consideration to the principal submission of misappropriation of goods as the edifice of pre-existing dispute made by the Corporate Debtor in the Notice of dispute dated 07.03.2020 which is as extracted hereunder:

“4.2. This bench also notes that vide order dated 27.03.2023 this bench directed the Corporate Debtor to produce its books of accounts and treatment of the amount claimed to have been misappropriated by the Operational Creditor. The Corporate Debtor produced a single page accounting treatment that reflected an entry dated in June 2016 in which the Corporate Debtor had claimed that the alleged misappropriation happened in September, 2016. This bench noticed that the earlier ledger produced by the Corporate Debtor reflected an entry

made on 30.06.2016. Accordingly, this bench vide order dated 23.06.2023 directed the Corporate Debtor to clarify the confusion in the accounts maintained by the Corporate Debtor to which the Corporate Debtor produced a detailed ledger from the period June 2012 to September 2016. The ledger maintained by the Corporate Debtor did not contain any of the entries. Due to this discrepancy this bench vide order dated 07.07.2023 asked the Corporate Debtor to clarify the discrepancy and to demonstrate the corresponding credit entry to the debit entry of the Operational Creditor's account. The Corporate Debtor filed an affidavit dated 19.07.2023 stating that the earlier screenshot placed on record vide affidavit dated 21.06.2023 must be ignored and the new ledger produced in affidavit dated 05.07.2023 must be considered. This clearly raises a doubt on the veracity of the accounts maintained by the Corporate Debtor. It also reflects that no reliance can be placed on the different ledger copies produced by the Corporate Debtor, which appear manipulated. This Bench observes that the Corporate Debtor has expressly admitted its outstanding liability of 1.75 Cr in 2015. Subsequently, as an afterthought the issue of misappropriation was raised on the said amount which was an admitted transaction liability."

(Emphasis supplied)

21. From the material placed on record, we find that the Adjudicating Authority had ordered on 27.03.2023 to explain how the misappropriation of disputes was handled by the Corporate Debtor in their books of accounts following which the Corporate Debtor had submitted a single page screen shot of a ledger reflecting a ledger entry dated 30.06.2016, the amount of which roughly resembled the alleged misappropriated amount as is placed at page 388 of Appeal Paper Book ('**APB**' in short). Moreover, while this entry was dated June 2016 in the ledger, the Corporate Debtor had claimed the alleged misappropriation to have happened in September 2016 and thus the ledger entry and misappropriation of goods are not directly attributable to each other. Besides the fact that the date in the ledger entry happened to be a date which preceded the allegation of misappropriation of goods, we notice that the

Adjudicating Authority upon noticing the vulnerability of relying on the one-page screen shot of the ledger produced by the Corporate Debtor, the Corporate Debtor was directed on 23.06.2023 to produce a detailed ledger account. In their detailed ledger as placed at pages 402-437 of APB, no entry contained in the earlier screen shot can be seen. Further while the account reflected in the earlier screen shot was Rs 2,75,91,783.97, the amount reflecting in the new detailed ledger was Rs 2,65,91,783.97 which indicates that the Corporate Debtor had belatedly matched the amount of goods that were allegedly misappropriated. This lends credence to the contention raised by the Operational Creditor that the financial record produced by the Corporate Debtor are manipulated and have been planted in the books of account belatedly and cannot be treated as genuine pre-existing dispute. Thus, we are persuaded to believe that the Corporate Debtor failed to produce plausible evidence before the Adjudicating Authority to corroborate that there was a pre-existing dispute between the parties with regard to Operational Creditor having misappropriated any goods. To our minds, for the reasons stated above, the ground of disputes raised by the Corporate Debtor therefore deserves to be disregarded being in the nature of a moonshine defence.

22. To sum up, when we look at the impugned order, we find that the Adjudicating Authority has considered the entire gamut of facts including the fact that the spectre of litigations confronting the Corporate Debtor as well as alleged criminal breach of trust by the Operational Creditor for contravention of service agreement and misappropriation of goods as reasons cited by the Corporate Debtor for non-payment of the operational debt. We also notice that the Adjudicating Authority has mulled at length on the debit entries in the two

ledgers of the Corporate Debtor before coming to the conclusion that the ledger entries prima-facie did not inspire their confidence. Coming to our analysis and findings, we are satisfied with the findings of the Adjudicating Authority that facts on record speak loud and clear that the Corporate Debtor has all along admitted that it owed an operational debt to the Operational Creditor and that it was endeavouring to clear the dues which amount was in excess of the threshold limit. The contents of the letter dated 22.04.2015 and email dated 07.03.2016 make it amply clear that the Corporate Debtor had admitted the operational debt. The aforementioned admissions by the Corporate Debtor amounts to be a clear acknowledgment of debt being due and payable. We also do not find any material which has been placed on record by the Corporate Debtor to show that they had categorically rejected the outstanding dues claimed by the Operational Creditor prior to issue of demand notice. When the operational debt had already arisen and become due and invoices raised were not specifically disputed, there is nothing on record which detracts from the operational debt having become due and payable. For reasons already elucidated in the immediately preceding paragraph, the grounds on which alleged disputes have been claimed by the Corporate Debtor are feeble and not supported by credible evidence. This puts a serious question mark on the bona-fide of the bogey of pre-existing disputes raised by the Corporate Debtor. The Adjudicating Authority therefore does not appear to have committed any error in holding that all requisite conditions necessary to trigger CIRP under Section 9 stands fulfilled and that the grounds of pre-existing disputes do not rest on genuine foundations. Thus, even on the

third test laid down by ***Mobilox judgment supra***, the contention of the Appellant fails.

23. In result, we find that no error has been committed by the Adjudicating Authority in admitting the application under Section 9 of IBC. We find no merit in this Appeal. Appeal is dismissed. CIRP proceedings against the Corporate Debtor may be proceeded with in accordance with law. No costs.

[Justice Ashok Bhushan]
Chairperson

[Barun Mitra]
Member (Technical)

Place: New Delhi
Date: 26.11.2024

Abdul/Harleen