NATIONAL COMPANY LAW APPELLATE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

Company Appeal (AT) (Insolvency) No. 364 of 2024

[Arising out of the Impugned Order dated 02.01.2024 passed by the Adjudicating Authority, National Company Law Tribunal, Mumbai Bench-I in CP (IB) 728/MB/C-I/2023]

In the matter of:

Vinita Pramod Devkar
Suspended Director of
M/s. Rameshwar Textile Mills Private Limited
Residing at:
Flat No. B/1201 B Building,
Rajhans Elita, Pal Hajira Road,
Opp. New RTO, Surat,
Gujarat - 395009

…Appellant

Versus

(1) Shri Kailash Shah
Interim Resolution Professional of
M/s. Rameshwar Textile Mills Private Limited
Having its address at:
505, 21st Century Business Centre
Near World Trade Centre Ring Road, Surat
Gujarat 395002.

(2) Ashish Omprakash Jain
Proprietary Concern of Sadhna Dye Chem
235, GIDC Industrial Estate, Pandesara
Surat Gujarat 394221.

…Respondents

Present:

For Appellant : Mr. Palash S. Singhai, Mr. Pragya Prakash Upadhyay and Mr. Harshal Sareen, Advocates.

For Respondent : Mr. Gaurav Mitra, Sr. Advocate, Mr. Ravi Raghunath and Ms. Aarushi Mishra, Advocates for R-2.

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

02.01.2024 (hereinafter referred to as '**Impugned Order**') passed by the Adjudicating Authority (National Company Law Tribunal, Mumbai Bench-I) in C.P.(I.B.)728/MB/C-I/2023. By the impugned order, the Adjudicating Authority has admitted the Section 9 petition filed by the Operational Creditor admitting the Corporate Debtor into the rigors of Corporate Insolvency Resolution Process (**'CIRP'** in short). Aggrieved by the impugned order, the present appeal has been preferred by the suspended Director of the Corporate Debtor.

2. Coming to the brief factual background which is relevant for considering the matter at hand, we find that an agreement was entered between S.R. Garments and the Government of Uttar Pradesh for supply of socks. For this purpose, M/s Rameshwar Textiles Mills Private Limited - Corporate Debtor engaged Sadhna Dye Chem – Operational Creditor as sub-contractor and in turn the Operational Creditor had engaged AOV Clever Knit LLP (**'Clever Knit'** in short) as sub-contractor. As part of business transactions, the Operational Creditor supplied socks to the Corporate Debtor and raised six invoices amounting to Rs.1,65,97,750/-. On not having received payments, a Section 8 Demand Notice was issued by the Operational Creditor on 24.04.2023 by post, delivery of which was admittedly unsuccessful. Thereafter on 02.05.2023, the Demand Notice was purportedly served by the Operational Creditor by email which the Corporate Debtor contended not to have received. On 07.07.2023, the Operational Creditor filed Section 9 application for an operational debt of Rs.4,29,14,887/- and purportedly served an advance copy of Section 9 petition by email on 07.07.2023. The Adjudicating Authority on 21.08.2023 issued

notice and directed the matter to be listed on 12.09.2023. The Corporate Debtor was informed about the date of hearing by email by the Operational Creditor. However, as the Corporate Debtor was not present during the hearing on 12.09.2023, the Adjudicating Authority gave another opportunity to appear on 16.10.2023. The Corporate Debtor was intimated about the next date of hearing by an email sent by the Operational Creditor on 15.10.2023. On 16.10.2023, as the Corporate Debtor again remained absent from the hearing, the Adjudicating Authority granted yet another chance to the Corporate Debtor to file an affidavit in reply and fixed the next hearing as the last opportunity on 22.11.2023. Since the Corporate Debtor did not appear on 22.11.2023, the matter was set ex-parte by the Adjudicating Authority and the Section 9 petition was admitted and CIRP initiated against the Corporate Debtor. Aggrieved by the impugned order, the suspended Director has come up in appeal.

3. Shri Palash S. Singhai, Ld. Advocate for the Appellant submitted that the Section 9 application had been admitted ex-parte by the Adjudicating Authority without giving the Appellant a meaningful opportunity to be heard thereby violating the principles of natural justice. Submission was pressed that the Operational Creditor had failed to validly serve and deliver the Demand Notice under Section 8(1) of the IBC. This led to ex-parte admission of the Section 9 petition without the Corporate Debtor getting a fair hearing before the Adjudicating Authority and therefore the impugned order deserves to be set aside. Submission was also pressed that there were pre-existing disputes between the parties and hence the Section 9 petition ought not to have been admitted by the Adjudicating Authority. Apart from the need to reconcile the

account there was also an incidence of dispute between the parties in respect of the defective quality of goods supplied by the Operational Creditor as raised in their letter dated 05.07.2018 which issues have not been dealt in the impugned order by the Adjudicating Authority.

4. Refuting the contentions of the Appellant, Shri Gaurav Mitra, Ld. Advocate for the Respondent stated that the claim of the Operational Creditor stood at Rs. 4.29 Cr comprising of principal amount of Rs. 1,65,97,750/- and interest amount of Rs.2,63,17,137/-. This operational debt had arisen from the supply of socks under six invoices issued between 16.11.2017 to 27.12.2017 which invoices carried an express clause stipulating interest @30% p.a. for delayed payments. It was asserted that the alleged dispute raised by the Corporate Debtor with respect to supply of defective socks have no nexus with the six invoices which formed the subject matter of the present Section 9 petition. The bogey of pre-existing dispute was therefore a moonshine defence which has been raised by the Corporate Debtor to save themselves from the rigours of insolvency proceedings. On the contention that there was violation of natural justice on grounds of non-service of Section 8 Demand Notice, it was pointed out by the Operational Creditor that the Corporate Debtor was intimated through email on the registered email address of the Corporate Debtor regarding the issue of Section 8 Demand Notice as also in respect of dates of hearing fixed in the matter by the Adjudicating Authority. These emails were sent on the registered email address of the Corporate Debtor and the contention of the Appellant that this email ID was non-operational is a feeble

and frivolous defence since the Corporate Debtor had continued to use the same email account even after November, 2021.

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

6. The first bone of contention between the two parties is with regard to issue of valid service of Section 8 Demand notice on the Appellant by the Respondent No.2. It is the case of the Appellant that the Demand Notice which had been served through speed post to the registered office of the Corporate Debtor was not successfully served and had been returned to the Operational Creditor. It is also contended that the Demand Notice which was claimed to have been served by the Operational Creditor on 02.05.2023 by email at the email ID of rameshwart73@gmail.com was also not received by the Corporate Debtor as this email was not operational since July 2021. This email address of the Corporate Debtor was under the control of a former employee who was managing the email account but had quit the services of the Corporate Debtor. It was also contended that the Operational Creditor deliberately served the notice on this email knowing fully well that the email was no longer in use by the Corporate Debtor. Assertion was also made that though the notices were not served effectively by post or by email yet no order was issued for issue of substituted service of notice by way of newspaper publication by the Adjudicating Authority towards rendering effective service of notice. Much emphasis was laid on the fact that service of the Demand Notice under Section 8 is a condition precedent for filing a Section 9 application which pre requisite was clearly not complied with. Reliance was placed on the judgment of this

Tribunal in ***Sunil Sanghavi Vs. Cytech Coatings Pvt. Ltd. in CA(AT)(Ins) No. 635 of 2018*** wherein it has been held that in terms of the statutory construct of the IBC, there is a clear legislative fiat that a Corporate Debtor has to be put on notice that there was an outstanding amount which was due and payable by the Corporate Debtor qua the Operational Creditor and that the said amount remained unpaid. It has been vehemently contended that since no Section 8(1) notice had been validly served upon them, the Corporate Debtor remained unaware of the Section 9 proceedings and was precluded from defending themselves before the Adjudicating Authority.

7. Per contra it is the contention of the Respondent No.2 that the Section 8 Demand Notice was communicated to the Corporate Debtor by email on the registered email address of the Corporate Debtor. The email was sent on the registered email address which had been provided by the Corporate Debtor to the Ministry of Corporate Affairs and even uploaded and disclosed on the Company Master Data. The ground taken by the Appellant that their registered email account was not operational since it was handled by an employee who had discontinued working after July 2021 is contrary to record since the same email ID of the Corporate Debtor continued to remain in the public domain even after the said employee had purportedly quit from the rolls of the Corporate Debtor. Even the Section 9 petition filing and dates of hearing fixed by the Adjudicating Authority were communicated by email at the same registered address and hence the contention of the Appellant that notice was not duly served upon them lacks foundation.

8. Before we return our findings on whether the Section 8 Demand Notice was validly served upon the Corporate Debtor, we take notice that in support of their contention that the service of demand notice by the Operational Creditor on the Corporate Debtor under Section 8 of the IBC is mandatory, reliance has been placed on the judgment of this Tribunal in ***Shailendra Sharma vs Ercon Composite*** *in* ***CA(AT)(Ins) No. 159 of 2020.*** Reference has also been made to the judgment of this Tribunal ***Sunil Sanghavi supra*** that it is the mandate of law that Section 8 notice has to be validly served upon the Corporate Debtor and service of notice was therefore not an empty formality. We have no quarrel with the proposition of law laid down in the above judgments that the Operational Creditor is required to deliver a demand notice on the occurrence of default on the Corporate Debtor and that a demand notice under Section 8 is a forerunner to the commencement of insolvency proceedings against a Corporate Debtor.

9. When we look at the sequence of events in the present case, we find that the Operational Creditor had initially sent the Section 8 Demand Notice by speed post which was admittedly unsuccessful. The notice was thereafter sent on the registered email address of the Corporate Debtor which address had been provided by them to the Ministry of Corporate Affairs. The same email ID is uploaded and disclosed on the Company Master Data. The ground taken by the Appellant that their registered email account was not in use since it was handled by an employee who had discontinued working with them after July 2021 lacks foundation since this address has been depicted as the email ID in public documents even after July 2021. This is substantiated by the fact that

Form No. MGT-7 in respect of the Annual Return for F.Y. 2020-21 records the same email address as placed at page 42 of Reply Affidavit of Operational Creditor. The MCA Company Master Data as on 20.07.2024 mentions the same email address as placed at page 22 of Reply Affidavit. The Board Resolutions of the Corporate Debtor dated 30.11.2021 at page 54 of Reply Affidavit also reflects the same email address. The Corporate Debtor was therefore clearly bound by the representation made by them to the world at large about their registered email address having placed the same on the public domain. Thus, when we look at the facts of the present case, we do not find any infraction of the ratio contained in the above ***Shailendra Sharma*** and ***Sunil Sanghavi*** judgments supra, since the Operational Creditor had met with the requirements prescribed by the statutory construct of IBC by having served the demand notice on the registered email address of the Corporate Debtor after the earlier delivery of the said notice by post had been unsuccessful. The Appellant has relied on the judgment of this Tribunal in ***Sharad Kesarwani Vs. M/s. Planetcast Media Services Ltd. & Anr.*** in ***CA (AT) (Ins) No. 272 of 2018*** wherein it was held that a demand notice under Section 8(1) of IBC is not supposed to have been served if the notice was not served by post at the correct address. The present case is distinguishable since in this case the demand notice was dispatched by post at the given address of the Corporate Debtor but could not be delivered since the office was under renovation. On the other hand, in the ***Sharad Kesarwani judgment supra,*** the notice was issued by the Operational Creditor at a wrong address even though the Operational Creditor was aware of the correct address of the Corporate Debtor. Hence, the

Sharad Kesarwani judgment supra does not come to the rescue of the Appellant.

10. It is pertinent to notice that reliance has been placed by the Respondent No.2 on the judgment of this Tribunal in ***Rajnish Gupta v. Union Bank of India & Anr in CA (AT) (Ins) No. 351 of 2021*** wherein it was held that the service by email on the registered email ID of the Appellant is sufficient in the eyes of law. When we look at the facts of the present case, we find that the demand notice had been served on the registered email ID of the Corporate Debtor as appearing on the Company Master Data. Attention has been adverted by the Respondent No.2 to the judgment of this Tribunal in ***Naresh Kumar Aggarwal v. CFM Asset Reconstruction Pvt. Ltd. & Anr. in CA(AT)(Ins) No. 736 of 2022*** wherein it was held that service of notice by way of email on the email address registered with the MCA would suffice the purpose of notice having been properly served. Doubts on the authenticity of the email ID used by the Operational Creditor in serving the demand notice on the Corporate Debtor cannot be entertained since the email ID happened to be the registered email ID of the Corporate Debtor as reflected in multifarious documents issued by them. Hence, to contend that the demand notice was not served on an operational email ID was simply a ruse raised to overcome the admission of Section 9 application admitted against them. Since the Demand Notice had been delivered at the registered email address of the Corporate Debtor which was on the public domain, the contention of the Corporate Debtor that the demand notice had not been served upon them does not appeal to reason. We

are of the considered view that there was no cogent basis for the Appellant to claim that Section 8 demand notice had not been validly served on them.

11. We also do not find much force in the contention of the Appellant that they were prejudiced since they did not get an opportunity of hearing. As has been noted by us at para 2, the Appellant neither filed a reply nor appeared before the Adjudicating Authority despite having been served with notices by email by the Operational Creditor of the hearings fixed by Adjudicating Authority. The Appellant cannot be seen to take advantage of their own misdoing of not presenting themselves before the Adjudicating Authority on the dates fixed for hearing.

12. The second limb of argument which has been raised by the Appellant is the existence of pre-existing disputes between the two parties. It was submitted that the Operational Creditor-Respondent No.2 had claimed that the Corporate Debtor had failed to pay Rs. 1,65,97,750/- in respect of six invoices raised from 16.11.2017 to 27.12.2017 (after taking into account payment of a sum of Rs 24,66,892/- on 16.11.2017) while deliberately concealing the fact that the Corporate Debtor had paid Rs.1,40,00,000/- in respect of the same transaction relating to the six invoices to AOV Clever Knit LLP (**'Clever Knit'** in short) on the instructions of the Operational Creditor. Attention was also adverted to the fact that Clever Knit had moved an application before the MSME Council making certain claims against the Operational Creditor and if the same is taken into cognisance, the claim of the Operational Creditor cannot be said to have fulfilled the threshold of Rs.1 Crore thereby making the Section 9 petition non-maintainable. It was also contended that since the application preferred by

Clever Knit is pending adjudication, the purported claim of the Operational Creditor stood disputed and therefore the amount of debt due was not yet crystallised. It was therefore asserted that the accounts between the Corporate Debtor and the Operational Creditor required to be reconciled. It was also asserted that there was clear evidence of pre-existing disputes between the parties as they had brought to the attention of the Operational Creditor vide their letter dated 05.07.2018 as placed at page 112 of Appeal Paper Book (**'APB'** in short) to arrange replacement of damaged socks suppled to them. In such circumstances, the Operational Creditor should not have been allowed to drag the Corporate Debtor into the rigours of insolvency by manipulating the transactions and payments. Assailing the impugned order, it was submitted that the Adjudicating Authority after merely noting the absence of the Corporate Debtor proceeded to admit the Section 9 petition without considering the issue of disputes over the quantum of debt and supply of damaged goods. This has rendered the Section 9 admission order illegal and unsustainable. It was also contended that the Section 9 petition was filed with the *malafide* intention not for insolvency resolution but for recovery proceedings which defeats the object and purpose of IBC.

13. Reliance has been placed by the Appellant on the judgment of the Hon'ble Supreme Court in ***Mobilox Innovations Pvt Ltd. Vs Kirusa Software Pvt Ltd. in (2018) 1 SCC 353*** wherein it has been held that the Adjudicating Authority must reject a Section 9 application if a notice of dispute has been received by the Operational Creditor or there is a record of dispute in the information utility.

14. Rival submission was made by the Respondent No.2 that the ground taken by the Appellant that the debt had not crystallised since certain claims had been filed by the Clever Knit before the MSME Council is entirely irrelevant to the present Section 9 petition. It was contended that the factum of Operational Creditor sub-contracting their supply order with Clever Knit was in the full knowledge of the Corporate Debtor and at no stage had the Corporate Debtor raised any dispute against the Operational Creditor in relation to the transactions with the Clever Knit. Further, the journal vouchers entries made by the Corporate Debtor to reduce the dues owed to the Operational Creditor by showing payments to Clever Knit are entries which are unilateral in nature and constituted internal records which cannot be relied upon to show that the debt had been extinguished. It was further submitted that since no demur, protest or dispute was raised in relation to these invoices prior to issue of Demand Notice or even prior to filing of Section 9 Petition, this testifies the absence of pre-existing dispute. It was also asserted that the dispute raised by the Corporate Debtor with respect to supply of defective socks was not related with the six invoices which formed the basis of the present Section 9 petition. Since the Corporate Debtor had failed to make payments despite several reminders, the interest of delayed payments was also occasioned. Since debt had become due and payable and default had been committed and there being no real and genuine pre-existing dispute, the Adjudicating Authority had rightly admitted their Section 9 application.

15. Coming to our findings on the issue of pre-existing dispute, at the outset we would like to observe that the principles laid down in ***Mobilox judgment***

supra which has been relied upon by the Appellant is settled law. The relevant excerpts of the said judgment is as reproduced below:

> *"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."*

The Hon'ble Supreme Court in the ***Mobilox judgement supra*** has however also clearly laid down that pre-existing dispute between the parties cannot be a feeble legal argument or an assertion of facts unsupported by evidence.

16. When we peruse the material on record, we find that the outstanding amount as per ledger filed by the Appellant in their Rejoinder-Reply at pages 27-28 is Rs.1,65,97,750/- which is identical to the outstanding principal sum claimed by the Operational Creditor. There is also no correlation between the invoices raised by the Operational Creditor between 16.11.2017 to 27.12.2017 and the letter dated 05.06.2018 raising an alleged dispute for a sum of Rs.19,41,740/- on account of defective goods supplied. Further when we see the letter of 05.07.2018, we notice that the Corporate Debtor had mentioned therein that if the damaged socks were not replaced, they would be constrained to issue any debit note of Rs.19,41,740/-. However, there is no material on record to substantiate that any such debit note was issued. No supporting

documents are available on record to show exchange of any sustained correspondence with the Operational Creditor having taken place with regard to this dispute. Thus, there is nothing credible to substantiate the pre-existence of dispute. Further if there was actually a dispute between the two parties basis the letter of 05.07.2018, it remains unexplained as to why the Corporate Debtor had continued to make the further payments to the Operational Creditor on 14.12.2021, 15.12.2021 and 21.12.2021 aggregating to Rs.40,00,000/- to the Operational Creditor. If the Corporate Debtor was of the firm view that defective goods had been supplied, it remains unexplained as to why no debit notes were issued nor has it been persuasively explained as to why the matter was not followed up by the Corporate Debtor. Coming to the contention of the Appellant that they had purportedly paid Rs.1,40,00,000/- to Clever Knit allegedly on the instructions of the Operational Creditor, we are constrained to note that we do not find any communication showing any authorisation or request given by the Operational Creditor to the Corporate Debtor for making any such payments to Clever Knit.

17. Thus, when we look at the alleged pre-existing dispute raised by the Corporate Debtor in the present matter, we are not convinced that the disputes are genuine and real. We are of the considered view that the defence taken by the Corporate Debtor of having been supplied with defective goods as the basis of pre-existing disputes is a moonshine defence.

18. From the aforesaid discussion and analysis of facts and circumstances, we are of the considered opinion that the Corporate Debtor has defaulted in the payment of operational debt which amount had clearly become due and

payable, and further in the absence of any credible and real pre-existing dispute, we find that no error has been committed by the Adjudicating Authority in admitting the application under Section 9 of IBC and putting the Corporate Debtor into CIRP. We find the Appeal to be devoid of merit. Appeal is dismissed. No Costs.

[Justice Ashok Bhushan]
Chairperson

[Barun Mitra]
Member (Technical)

[Arun Baroka]
Member (Technical)

Place: New Delhi
Date: 09.05.2025

Harleen/ Abdul