

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

Company Appeal (AT) (Insolvency) No. 1693 of 2024

&

I.A. No. 2827 of 2025

[Arising out of Order dated 21.08.2024 passed by the Adjudicating Authority
(National Company Law Tribunal, New Delhi, Principal Bench), in CP
No.224/(PB)/2024]

IN THE MATTER OF:

Rajjath Goel

...Appellant

Versus

Maxworth Infrastructure Pvt. Ltd. & Anr.

...Respondents

Present:

For Appellant : Mr. Abhijeet Sinha, Sr. Advocate with Mr. Prakhar Mithal, Mr. Devashish Chuhan, Ms. Jasleen Singh Sandha and Ms. Cynthia Duggal, Advocates.

For Respondents : Mr. Sonal Anand, Sr. Advocate with Ms. Surbhi Singh and Mr. Rishabh Kr. Singh, Advocates for R-1.

J U D G M E N T

ASHOK BHUSHAN, J.

This appeal has been filed by a suspended director of the corporate debtor – MRG Infrabuild LLP challenging the order dated 21.08.2024 passed by the adjudicating authority (National Company Law Tribunal (NCLT), New Delhi, Principal Bench), by which order, adjudicating authority has admitted Section 9 application filed by the operational creditor, Maxworth Infrastructure Private Limited. Aggrieved by the impugned order, this appeal has been filed.

2. Brief facts of the case necessary to be noticed for deciding the appeal are:

- i. The operational creditor Maxworth Infrastructure Private Limited was granted a license by Directorate of Town & Country Planning for construction and development of affordable housing society on a land in Sector 89, Gurgaon. Operational creditor launched a residential project “Aashray” and booked flats.
- ii. In the year 2018, a Term Sheet dated 13.08.2018 was executed between the operational creditor and the corporate debtor, where entire project along with the land and license was agreed to be purchased by the corporate debtor @ Rs.1,100 per sq. ft. for the built up area, totalling an amount of ₹55,96,25,000/-. The sale consideration included various components as has been detailed in the Term Sheet.
- iii. One Murliwala Realcom Pvt Ltd, a subsidiary company of the corporate debtor entered into an another Buyers Agreement with corporate debtor for sale of its 20 flats in a project constituted at City Residencies, Sector 10A Gurgaon. The corporate debtor was to make payment in stages of total consideration ₹10.36 crore and the amount of ₹3.2 crore was paid at the time of booking of flats and remainders was to be paid at the time of possession.
- iv. Dispute arose between the operational creditor and the corporate debtor, when corporate debtor discovered that flat sold by Murliwala Realcom Pvt. Ltd. did not have clear marketable title.

- v. Criminal Complaint was filed by the corporate debtor against the promoters. The promoters of operational creditor Maxworth Infrastructure Private Limited and Murliwala Realcom Private Limited were same. An FIR was registered being FIR No.0497 dated 26.07.2021 under Sections 406 & 420 at Police Station, Sector 10, District, Gurgaon.
- vi. The operational creditor issued a legal notice dated 09.07.2021, making a demand of ₹12.76 crore.
- vii. The complaint was filed in March 2021 by the corporate debtor against the promoters of operational creditor and Murliwala Realcom Pvt. Ltd., which was registered on 26.07.2021 as FIR.
- viii. On 28.10.2021, operational creditor again issued a legal notice, demanding an amount of ₹12,76,26,442/- from the corporate debtor.
- ix. On 07.11.2021 corporate debtor issued a detailed response objecting to the demand issued by the operational creditor.
- x. The accused against whom the FIR was registered approached the High Court of Punjab and Haryana, Chandigarh seeking an Anticipatory Bail. The High Court on 03.09.2021, while issuing notice granted interim protection to the accused, Anticipatory Bail application came for consideration before the Punjab and Haryana High Court on 08.11.2021. Punjab and Haryana High Court heard the applicants, government counsel as well as the learned counsel appearing for the

corporate debtor who were complainant. Punjab and Haryana High Court in the order dated 08.11.2021 noticed the dispute between the operational creditor and the corporate debtor and observed that dispute between the two companies regarding the respective rights flowing from the alleged Agreement. The rights and issues regarding implementation of the project can only be raised before the Civil Court. Punjab and Haryana High Court, however, without expressing any opinion on the merits allowed the Anticipatory Bail application.

- xi. The operational creditor filed Civil Suit No.2312/2022, before the Civil Judge, Gurgaon for injunction and recovery for an amount of ₹12.76 crore. The Suit was filed on 02.05.2022. The corporate debtor filed detail written statement before the Civil Judge, Gurgaon objecting to the claim of 12.76 crore against the corporate debtor.
- xii. It was pleaded by the corporate debtor that no amount is due. During pendency of the aforesaid Suit, operational creditor issued a demand notice under Section 8 of the IBC dated 01.03.2024 claiming an operational debt of ₹12.76 crore.
- xiii. The demand notice was replied by issuing a notice dispute by the corporate debtor on 11.03.2024. The operational creditor, however, despite receiving notice of dispute filed an application under Section 9 on 11.04.2024, in which application, adjudicating authority by the impugned order 21.08.2024, admitted Section 9 application.

- xiv. This appeal was heard by this Tribunal on 26.09.2024 and after hearing both the parties following order was passed:

“1. Learned Counsel for the Appellant submits that prior to giving Notice under Section 8 which was 01.03.2024, the Operational Creditor themselves have instituted Civil Suit being Civil Suit No. 2312/2022 before the Court of Civil Judge, Jr. Division Gurugram, Haryana. He has referred to Prayer B in the Suit which is as follows:

“b) To restrain the defendant from raising any construction on the project named The Meridian, MRG, Sec-89, Gurugram on the property bearing: no. 3046 situated at Murabba no. 7, qila no. 3//2 (6-12), 7/2/2 (6-11), 13/2, (5-16) 14/1, (7-4), 17/2/2 (3-4), 18/1(7-8) and 22/2/2, 8/1/2/10, '8/2/4, 13/1, 2/2 at sector 89, Gurugram as the defendant have got only partial interest in the same due to non-payment of balance sale consideration and term plan of Rupees Twelve Crore Seventy six lakhs only to the plaintiff.”

2. Submission is that in Part IV of the Section 9 Application, the amount claimed is Rs. 12,76,25,442/- . In Civil Suit, the Written Statement was filed and claim was disputed by the Corporate Debtor.

3. It is further submitted that the Adjudicating Authority in the Impugned Order has relied on the Orders passed in the Anticipatory Bail by the Punjab and Haryana High Court which cannot be said to be any conclusive material to admit Section 9 Application and it is submitted that in any view of the matter, there being Pre-Existing Dispute between the Parties regarding the amount claimed in the Section 9 Application, the same ought not to have been admitted.

4. Counsel for the Respondent submits that there was no Pre-Existing Dispute, since the Suit filed, the amount was referred to but the prayers in the Suit were other prayers also and that was for recovery of money, whereas, Section 9 Application is for resolution of the insolvency of the Corporate Debtor and is not a recovery proceeding.

5. Submission raised by both the parties needs consideration.

6. Issue Notice.

7. Let Reply be filed within two weeks. Rejoinder may be filed within further two weeks.

List this Appeal high on board 'For Disposal' on **24th October, 2024.**

In the meantime, in pursuance of the Impugned Order dated 21.08.2024, no further steps shall be taken."

xv. The respondents have filed their reply to the appeal to which rejoinder affidavit has also been filed by the appellant.

3. We have heard learned Sr. counsel, Mr. Abhijeet Sinha appearing for the appellant as well as learned counsel Mr. Sonal Anand appearing for the respondent.

4. Learned Sr. counsel Mr. Abhijeet Sinha appearing for the appellant challenging the impugned order submits that adjudicating authority committed error in relying on order of the Punjab and Haryana High Court passed in Anticipatory Bail application to come to the conclusion that debt of ₹12.76 crore is admitted in that proceeding by the corporate debtor. It is submitted that allegations in the FIR were with respect to 20 flats which were allotted by subsidiary company of the corporate debtor namely Murliwala Realcom Private Limited and FIR contained allegation that Murliwala Realcom Private Limited did not have marketable title for 20 flats, hence fraud and forgery was done with the corporate debtor. It is contended that there was no occasion for admission of any debt in Anticipatory Bail application. Punjab and Haryana High Court itself in the order relied by the adjudicating authority has noticed that there was dispute between the parties with regard to contract which are subject matter of the Civil Court. Punjab and Haryana High Court

in the impugned order has clearly said that it is not expressing any opinion on merits. When order of the Punjab and Haryana High Court deciding the Anticipatory Bail application is clear reliance by adjudicating Authority for finding out the debt from the said order is wholly erroneous. It is further submitted that the operation creditor themselves have filed a Civil Suit on 02.05.2022, where the same debt ₹12.76 crore is claimed from the corporate debtor. Corporate debtor by filing the written statement has refuted the claims of the operation of creditors. It was during pendency of the Civil Suit that demand notice has been issued on 01.03.2024, which notice was replied by the corporate debtor on 11.03.2024, which reply is notice of dispute. In view of the Sections 8 & 9 of IBC, there was pre-existing dispute and notice of dispute having been issued by corporate debtor, Section 9 application could not have been admitted. Adjudicating authority ignored the pre-existing dispute which was clearly reflected from order of the Punjab and Haryana High Court passed in the Anticipatory Bail application as well as Civil Suits filed by the operational creditor prior to issuance of demand notice. The pre-existing dispute between the parties was writ large which has been ignored by the adjudicating authority while admitting Section 9 application. It is submitted that present is a case where corporate debtor never admitted its debt and corporate debtor's throughout claim is that no amount is due and adjudicating authority's observation that there is a clear admission of debt relying on Anticipatory Bail order is unsustainable. It is submitted that there being Civil Suit filed by the operational creditor much before issuance of demand notice, Section 9 application deserves to be rejected. Learned counsel

for the appellant submitted that the debt arising from Term Sheet between the parties is not an operational debt and no Section 9 application could have been initiated for the said debt.

5. Learned counsel appearing for the operational creditor refuting the submission of the appellant submits that the terms sheet entered between the parties itself has noted the total consideration which was to be paid by the corporate debtor which comes to ₹55,96,25,000/- and the corporate debtor has paid only ₹43 crore, the amount of ₹12.76 crore is still outstanding. The Term Sheet between the parties is clear and categorical and corporate debtor's case is that amount is not due is false and baseless. It is submitted that in proceeding before the Punjab and Haryana High Court the counsel appearing for the complainant has not denied that amount of ₹12.76 crore is still to be paid by the corporate debtor. Adjudicating Authority did not commit any error in relying on the statement made by counsel for the complainant before the Punjab and Haryana High Court. Proceeding of the Punjab and Haryana High Court are proceeding of Competent Court which has been rightly been relied by the adjudicating authority in the impugned order. The Suit which has been filed by operational creditor was Suit for injunction and was not substitute for recovery of the amount. Despite filing of the Suit by operation of creditor, operational creditor was fully entitled to initiate proceeding under Section 9. The defence which is stated to be raised by the corporate debtor is a moonshine defence which has no legs to stand. Adjudicating Authority has rightly admitted Section 9 application, there being debt and default on the part of the corporate debtor. Learned counsel for the

respondent submitted that the debt claimed by operational creditor is an operational debt. The present is a sale and purchase of land between the parties which land has been used by the corporate debtor to develop and sell housing units which are going to be revenue sides. The Civil Suit sought relief for mandatory and permanent injunction which has distinct prayers. Even in the Civil Suit, the corporate debtor is not claiming that entire amount of ₹55.96 crore have been paid and no amount is due. Both Civil Suit and insolvency can well go in hand in hand filing of Suit is not a bar to initiate CIRP against the corporate debtor. The case of the respondent that amount of ₹55.96 crore has been paid is absolutely bogus and unreliable. Corporate debtor has already admitted about the debt in order dated 08.11.2021 passed by the Punjab and Haryana High Court in proceeding for grant of Anticipation Bail.

6. We have considered the submissions of the counsel for the parties and perused the records.

7. Copy of Term Sheet between the parties 16.07.2018 has been brought on record as part of Section 9 application. The corporate debtor was mentioned as buyer of the property and Maxworth Infrastructure Pvt. Ltd. was mentioned as developer/licensee. Landowners were individuals to make their mention. The consideration of built up area was ₹1,100 per sq. ft. assuming the total built-up area is 5,08,750 sq. ft. The proposed terms were captured in the Term Sheet in paragraphs 1 to 24.

8. Adjudicating authority has heavily relied on the order of Punjab and Haryana High Court dated 08.11.2021 passed in CRMM 35001/2021 (Anticipatory Bail application). We first need to notice the contents of the order before entering into the respective submissions of the parties. The corporate debtor has filed a complaint against the promoter of operational creditor who were also the promoters of a subsidiary company of operational creditor, Murliwala Realcom Private Limited. Punjab and Haryana High Court in the order has noticed about Agreement regarding allotment of 20 flats to the corporate debtor in a scheme totalling consideration of ₹10.36 crore out of which ₹3.20 crore was received by the operational creditor. High Court has also noted another project in affordable group housing society in Sector 89, where parties have entered into transaction. High Court has also taken note of the legal notice dated 09.07.2021 served to the complainant, asking the complainant to pay balance amount of ₹12.76 crore. High Court after hearing the parties has made following observations:

“...After hearing the learned counsel for the parties and considering the above background of the ease, this Court is of the opinion that dispute between the two rival construction companies relates to the agreement(s) entered into by them in June, 2018 and September, 2018 and both have laid their respective claims against each other for breach of contract and recovery of money. Though, the allegations in the FIR relate to deal regarding 20 flats agreed to be transferred by the accused company, but admittedly, only a sum of Rs.3:20 crores was paid by the complainant in September, 2018 against a total sale consideration of Rs.10.36 crores, who is still ready and willing to Complete the contract, and is also ready to make the balance payment to the accused company. Admittedly, after execution of this contract m the year 2018 till the registration of the case, no steps were

taken by the complainant seeking implementation of the said contract and the said deal is incomplete as far as transfer of title is concerned. The accused company has also expressed its intention to amicably conclude the deal, as according to it, the complainant is yet to make the balance payment of consideration towards their previous agreement relating to Affordable Group Housing Society', Sector-8', Gurugram..."

9. With regard to amount of ₹12.76 crore, High Court has also made observation to the following effect:

"...During the course of hearing, learned State counsel has fairly stated that the Investigating Officer has confined the investigation relating to the allegations contained in the FIR and has not looked into the earlier transaction between the parties. Interestingly, the learned counsel for the complainant has also not disputed the previous agreement pertaining to 'Affordable Group Housing Society', Sector-89, Gurugram, but has stated that the stage of payment of balance amount of Rs.12.76 crores is yet to come. However, he has not elaborated as to when the said payment is to be made. This clearly means that the complainant also has to clear its debt against the accused company..."

10. The Punjab and Haryana High Court allowed the Anticipatory Bail application by making order dated 03.09.2021 absolute. The Punjab & Haryana High Court has noticed that dispute between the parties is regarding their respective rights flowing from the alleged Agreement and same is from the documentary material. High Court held that rights of the parties and the issues regarding implementation of the contract can only be raised in the Civil Court. It is useful to notice last paragraph of the judgement of the High Court, which is as follows:

"...The grounds raised on behalf of the learned State counsel that custodial interrogation, of the petitioners is necessary to recover the amount of Rs.3.20 crores

and also to recover the forged register maintained by the accused claiming the subject property to be free from any charge do not appear to be justified, as prima facie, the dispute between the two companies is regarding their respective rights flowing from the alleged agreements and the same is founded upon documentary material. The rights of the parties and issues regarding implementation of the contracts can only be raised before the civil Court, but none of the parties have filed any suit either for specific performance of the contract or for recovery of money. It has also not been disputed by learned State counsel that the agreement/mortgage documents of the flats have already been collected from the concerned bank. Thus, this Court has no hesitation in holding that the custodial interrogation of the petitioners is not necessary.

Consequently, without meaning any expression of opinion on the merits of the, case, the petition is allowed, and order dated 03.09.2021 is made absolute.”

11. The adjudicating authority in the impugned order has relied on Punjab and Haryana High Court and has held that debt of ₹12.76 crore was admitted in the proceeding before the Punjab and Haryana High Court. It is useful to notice paragraph 17 of the impugned judgement, which is as follows:

“17. It further transpires from the order of the Hon'ble Punjab & Haryana High Court that the debt to the tune of INR 12.76 Cr. with respect to transaction in question i.e., 'Affordable Group Housing Project' was admitted in the proceedings before the Hon'ble Punjab and Haryana High Court. The Hon'ble Punjab and Haryana High Court has clearly stated time and again that there is another agreement relating to 'Affordable Group Housing Project' in Sector 89 Gurugram which is at stage for payment of balance of ₹12.76 Cr. and the same has not been fructified yet. This statement has been recorded by the Hon'ble Punjab & Haryana High Court, in order delivered orally on 08.11.2021 on the basis of statement made by the Ld. Counsel for the complainant in the course of arguments/ hearing.

Thus, there is a clear case of admission of debt of ₹12.76 Cr. under the Term Sheet dated 13.08.2018.”

12. The conclusion of the adjudicating authority that on the basis of order of the Punjab and Haryana High Court that there is a clear case of admission of debt of ₹12.76 crore is unfounded. Punjab High Court has clearly noticed that there is a dispute between the parties regarding rights flowing from the alleged Agreement. High Court has further observed “the rights of the parties and issues regarding implementation of the contract can only be raised before the Civil Court but none of the parties have filed any Suit either for respective performance of the contract or for recovery of money”. In the operative portion of the order, Punjab and Haryana High Court has observed “consequently, without meaning any expression of opinion on the merits of the case petition is allowed and order dated 03.09.2021 is made absolute”. High Court was clearly indicated that it is not making any expression of opinion on the merits of the case. The order of the High Court also cannot be read to mean that High Court recorded any admission of the counsel for the complainant that the debt of ₹12.76 crore is admitted, whereas, the statement of the complainant counsel as recorded by the High Court clearly mentions that counsel said that payment of amount of ₹12.76 crore is yet to come. Thus, there was no admission recorded by the High Court regarding amount of ₹12.76 crore and adjudicating authority erred in culling out an admission in an order passed in Anticipatory Bail by the Punjab and Haryana High Court

13. The submission which has been pressed by the counsel for the appellant is that there was pre-existing dispute between the parties hence,

Section 9 application could not have been admitted. We need to notice the statutory scheme under Sections 8 & 9 and law on the subject before we advert to the facts of the present case. Section 8(1) requires an operational creditor on occurrence of default to deliver a demand notice of unpaid operational debt. Section 8(2) provides that corporate debtor within a period of 10 days of the receipt of the demand notice bring into notice of the operational creditor existence of a dispute. Section 8(2) is as follows:

“8. Insolvency resolution by operational creditor.—

(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](#), ¹[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.”

14. Section 9(5) contemplate passing of the order by adjudicating authority for admitting/rejecting of the application. Section 9(5) which is relevant is as follows:

“9. Application for initiation of corporate insolvency resolution process by operational creditor.–

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

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

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

(b) there is no [payment] of the unpaid operational debt;

(c) the invoice or notice for payment to the corporate debtor has been delivered by the operational creditor;

(d) no notice of dispute has been received by the operational creditor or there is no record of dispute in the information utility; and

(e) there is no disciplinary proceeding pending⁴ against any resolution professional proposed under sub-section (4), if any.

(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 of the date of receipt of such notice from the adjudicating Authority.”

15. Hon’ble Supreme Court in the matter of **‘Mobilox Innovations Private Limited’ Vs. ‘Kisrusa Software Pvt. Ltd.’** reported in **[(2018) 1 SCC 353]** after noticing the scheme under Sections 8 & 9, laid down following in paragraph 33 and 34:

“33. *The scheme under Sections 8 and 9 of the Code, appears to be that an operational creditor, as defined, may, on the occurrence of a default (i.e. on non-payment of a debt, any part whereof has become due and payable and has not been repaid), deliver a demand notice of such unpaid operational debt or deliver the copy of an invoice demanding payment of such amount to the corporate debtor in the form set out in Rule 5 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 read with Form 3 or 4, as the case may be [Section 8(1)]. Within a period of 10 days of the receipt of such demand notice or copy of invoice, the corporate debtor must bring to the notice of the operational creditor the existence of a dispute and/or the record of the pendency of a suit or arbitration proceeding filed before the receipt of such notice or invoice in relation to such dispute [Section 8(2)(a)]. 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). This application is to be filed under Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 in Form 5, accompanied with documents and records that are required under the said form. Under Rule 6(2), the applicant is to dispatch by registered post or speed post, a copy of the application to the registered office of the corporate debtor. Under Section 9(3), along with the application, the statutory requirement is to furnish a copy of the invoice or demand notice, an affidavit to the effect that there is no notice given by the corporate debtor relating to a dispute of the unpaid operational debt and a copy of the certificate from the financial institution maintaining accounts of the operational creditor confirming that there is no payment of an unpaid operational debt by the corporate debtor. Apart from this information, the other information required under Form 5 is also to be given. Once this is done, the adjudicating authority may either admit the application or reject it. If the application made under sub-section (2) is incomplete, the adjudicating authority, under the proviso to sub-section (5), may give a notice to the applicant to rectify defects within 7 days of the receipt of the notice from the adjudicating authority to make the application complete. Once this is done, and the adjudicating authority finds that either there is no repayment of the unpaid operational debt after the invoice [Section 9(5)(i)(b)] or the invoice or notice of payment to the corporate debtor has been delivered by the operational creditor [Section 9(5)(i)(c)], or that no notice of dispute has been received by the operational creditor from the corporate debtor or that there is no record of such dispute in the information utility [Section 9(5)(i)(d)], or that there is no disciplinary proceeding pending against any resolution professional proposed by the operational creditor [Section 9(5)(i)(e)], it shall admit the application within 14 days of the receipt of the

application, after which the corporate insolvency resolution process gets triggered. On the other hand, the adjudicating authority shall, within 14 days of the receipt of an application by the operational creditor, reject such application if the application is incomplete and has not been completed within the period of 7 days granted by the proviso [Section 9(5)(ii)(a)]. It may also reject the application where there has been repayment of the operational debt [Section 9(5)(ii)(b)], or the creditor has not delivered the invoice or notice for payment to the corporate debtor [Section 9(5)(ii)(c)]. It may also reject the application if the notice of dispute has been received by the operational creditor or there is a record of dispute in the information utility [Section 9(5)(ii)(d)]. Section 9(5)(ii)(d) refers to the notice of an existing dispute that has so been received, as it must be read with Section 8(2)(a). Also, if any disciplinary proceeding is pending against any proposed resolution professional, the application may be rejected [Section 9(5)(ii)(e)].

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 one 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.”

16. Hon'ble Supreme Court has also elaborated the concept of existence of dispute where Hon'ble Supreme Court has held that the Court has to see as to whether appellant has raised the plausible contention requiring further investigation which is not a patently feeble legal arguments or an assertion of facts unsupported by the evidence. In paragraph 56 of the judgement following has been laid down:

“56. Going by the aforesaid test of “existence of a dispute”, it is clear that without going into the merits of the dispute, the appellant has raised a plausible contention requiring further investigation which is not a patently feeble legal argument or an assertion of facts unsupported by evidence. The defence is not spurious, mere bluster, plainly frivolous or vexatious. A dispute does truly exist in fact between the parties, which may or may not ultimately succeed, and the Appellate Tribunal was wholly incorrect in characterising the defence as vague, got up and motivated to evade liability.”

17. We need to first notice the demand notice and reply to demand notice issued by the corporate debtor to find out as to whether the reply to demand notice can be said to be a notice of the dispute within meaning of Sections 8/9 of the IBC. Copy of the demand notice dated 01.03.2024 submitted in Form – III is part of Section 9 application under heading “particulars of operational debt”. The operational creditor has given details of Term Sheet dated 13.08.2028, total consideration of ₹55.96 crore. The amount of ₹12,76,25,432/- was claimed as debt outstanding amount. The demand notice was replied by the corporate debtor by letter dated 11.03.2024. In paragraph 6 of the reply to the demand notice with reference to demand notice following was stated in paragraphs 6 and 7:

“6. However, .in response to the present Demand Notice dated 01.03.2024, it is stated that all the allegations are wholly false and are denied as follows:

(i) Your Client is not entitled to any operational debt. It is further stated that the relationship between Your Client and Our Client does not give rise to any operational debt.

(ii) It is specifically denied that the date of default as claimed by you is 24.07.2021. It is submitted that the date of default mentioned by you in the Demand Notice dated 01.03.2024 is contradictory to the date of default mentioned in the Second Legal Notice; wherein the date of default is 20.05.2019.

(iii) It is pertinent to note that Your Client has also filed Civil Suit No. 2312/2022 for permanent injunction before Civil Judge (Junior Division), Gurugram, Haryana which pertains to the housing project injector 89-Gumgram. It is the same project for which Our Client got development rights from Your Client. It is pertinent to note that while filing the said suit, your client has not raised a claim of money as is being demanded right now. Thus, any claim at this: belated stage is clearly barred under Order 2 Rule 2 of the CPC. Hence, the present Demand Notice dated 01.03.2024 is illegal and not valid.

7. It is hereby again reiterated that there is a pre-existing dispute between the parties pursuant to which an FIR No. 0497 dated 26.07.2021 has been registered against Your Client and its directors for cheating, forgery, and criminal breach of trust. Both the Directors of Your Client are on bail and facing criminal trial before District Courts of Gurugram, Haryana. The criminal case bearing no. CHI/36719/2022 arising out of the said FIR is now listed on 27.05.2024 for arguments on charge. It appears that your clients, under the fear of being held guilty and convicted, are trying to arm-twist Our Client and its Partners to illegally extract monies and withdraw legal proceedings against your clients.”

18. In paragraph 11 of the reply to the demand notice filing of Civil Suit by the operational creditor has also been highlighted which was omitted to be mentioned in the demand notice. Paragraph 11 is as follows:

“11. Therefore, in view of the above your Client is in no capacity of Operational Creditor to demand Rs. 12,76,25,442/- (Rupees Twelve Crores Seventy Six Lacs Twenty Five Thousand Four Hundred and Forty Only) as the Operational Debt. Moreover, without admitting any liability on the part of Our Client, it is clear that the present Demand Notice is barred by limitation as as per your own case, the right to sue/demand; was from the date of registration of conveyance deed i.e. 20.05.2019. Further, your Client has already filed a civil suit relinquishing/omitting the claim for recovery of Net Outstanding Due of Rs. 12,76,25,442/- and thus your client is barred Under Order 2 Rule 2 of the Civil Procedure Code, 1908 from raising any such claim. This notice is only an attempt to bypass Order 2 Rule 2 of the CPC, 1908 and misuse the provisions of IBC, 2016. Hence, the present Demand Notice dated 01.03.2024 is an opportunistic and fraudulent attempt by Your Client to try and harass Our Client and its partners, and as such we reserve the right to pursue any and all remedies available under law.”

19. When we look into the allegations, paragraphs 6 & 7 of the reply to the demand notice, it is clear that the reply to the demand notice is clearly a notice of dispute. In reply to demand notice, corporate debtor has also referred to two earlier notices issued by operational creditor dated 09.07.2021 and 28.10.2021. A detailed response was sent by corporate debtor on 07.11.2021. In both the aforesaid notices issued by operational creditor it was same claim of ₹12,76,26,444/- which was replied by the corporate debtor on 07.11.2021. It was pleaded by the corporate debtor that no money is due

and payable by corporate debtor to operational creditor. It is useful to notice paragraphs 2 to 5, which is as follows:

“2. At the outset, it is stated that all the allegations made in the Demand Notice dated 28.10.2018 are wholly false and are denied. That there is no operational debt which exists. Further, there is a pre-existing dispute between the parties with respect to false dues claimed under this notice for the real estate project situated at Sector 89, Gurugram, as allegedly were demanded.in the police complaint dated 20 July 2021 filed by your client (through Mr. Amarjeet Dhillon of Maxworth Infrastructures Pvt. Ltd.), wherein all issues were addressed and replied to by my client. This demand notice appears to be a counterblast to the pending legal proceedings against your client, and it appears that you client is indulging in baseless forum shopping to harass MRG Infrabuild LLP.

3. That there is a pre-existing dispute between the parties pursuant to which an FIR No. 0497 dated 26.07.2021 has been registered against Maxworth Infrastructures Pvt. Ltd. and its directors for cheating, forgery, and criminal breach of trust. That the bail application of both the Directors of your client was dismissed by Ld. Addl. Sessions Judge, Gurugram on 16.08.2021. It appears that your clients, under the fear of arrest are trying to arm-twist my client to illegally extract monies and withdraw legal proceedings against your clients. 4. It is further stated that the Demand Notice dated 28.10.2021 suffers from, defects, infirmities and breaches as it does not follow the format prescribed under Section 8 (1) of the Insolvency and Bankruptcy Code, 2016.

5. That the Demand Notice dated 28.10.2021 raised by you is fraudulent and that there is no money due and payable by M/s MRG Infrabuild LLP to Maxworth Infrastructures Pvt. Ltd. These amounts have been disputed by and between the parties prior to receipt of t your Demand Notice.”

20. Thus, the present is a case where prior to issuance of demand notice earlier notice were issued by the operational creditor twice in the year 2021,

which was refuted by letter dated 07.11.2021 and the demand notice was also replied refuting the claim raised by the operational creditor of ₹12.76 crore.

21. The submission which has been also pressed by the counsel for the appellant is the filing of Civil Suit by the operational creditor on 02.05.2022. The plaint of the Civil Suit CS No.2312/2012 has been brought on the record. Copy of the plaint of the Suit was filed by the corporate debtor along with the reply to Section 9 application. The prayers of the Suit are to the following effect:

“It is therefore most respectfully prayed that this Hon'ble Court may be pleased to grant the following relief to the plaintiff as against the defendant:

a) To restrain the defendant from alienating/selling/creating a third party interest in the said property bearing no. 3046 situated at Murabba no. 7, qila no. 3//2 (6-12), 7/2/2 (6-11),13/2, (5-16) 14/1,(7-4), 17/2/2(3-4),18/1(7-8) at sector-89, Gurugram as the defendant has not acquired complete interest in the said property and is not competent to create any such interest in view of facts mentioned in the complaint.

*b) To restrain the defendant from raising any construction on the project named The Meridian, MRG, Sec-89, Gurugram on the property bearing no. 3046 situated at Murabba no. 7, qila no. 3//2 (6-12), 7/2/2 (6-11), 13/2, (5-16) 14/1,(7-4), (17/2) / 2 * (3 - 4), 18/1 * (7 - 8) and 22/2/2, 8/1/2/10, 8/2/4, 13/1, 2/2 at sector-89, Gurugram as the defendant have got only partial interest in the same due to non-payment of balance sale consideration and term plan of Rupees Twelve Crore Seventy six lakhs only to the plaintiff.*

c) That in the alternate it is respectfully prayed that if defendants during pendency of the suit succeeds in achieving their above-said illegal object of any kind, in that event appropriate decree/ order may kindly be passed in the matter, in favour be of the plaintiff and against the defendants, by directing the defendants to

pay the amount by the plaintiff for purchasing/ investment amount to the plaintiff.

d) Cost of the suit may also be awarded.

e) Any other relief which the Hon'ble Court may think just the proper in the circumstances of the case may also be awarded in favour of the plaintiff and against the defendants in the interest of justice.”

22. When we look into prayer (b) of the suit, it is clear that non-payment of balance sale consideration of ₹12.76 crore has been pleaded on basis of which the mandatory injunction has been sought against the corporate debtor. In paragraph 11 of the plaint, it was pleaded by the plaintiff, operational creditor that amount of ₹12,76,05,442/- is still due, which is as follows:

“11. That even after paying the aforesaid amount of Rupees Forty three Crore eighteen lakh thirty four thousand three hundred seventy four only the defendant was liable to pay an amount of Rupees Twelve crore seventy six lakhs twenty five thousand four hundred forty two only in lieu of considerations as decided in term sheet but had not paid the balance amount for the reasons best known to the defendant.”

23. The corporate debtor has filed the written statement in the suit, which written statement was also part of the reply to the Section 9 application. Written statement of July 2022, i.e., much before issuance of the demand notice on 01.03.2024. In the written statement, corporator debtor has clearly stated that nothing remains due to be paid which was pleaded in paragraph 7 of the written statement, which is as follows:

“...The Plaintiff cannot seek injunction against the Defendant in respect of the land now developed Into Affordable Group Housing Complex as per the license stated above as the plaintiff neither owned nor possessed the same. The plaintiff IS also fully aware of the fact that the said term sheet had been fully acted upon between the parties and nothing remains due to

be paid by the defendant, however without prejudice It Is submitted that the plaintiff, merely on the basis of a Term Sheet which, at the best, can be used for recovery of money, cannot indulge the defendant in any false litigation. It is settled proposition of law that when an equally efficacious remedy Is available to the plaintiff, the mere suit for permanent or mandatory injunction is not maintainable and barred U/s 4.1(h) of The Specific Relief Act, 1963...”

24. The defendant has also pleaded that although the plaintiff has admitted the admission of ₹43,19,99,558/- but there are other payments made by corporate debtor, which pleadings have been made in paragraph 9 to the following effect:

*“9. That the Plaintiff has not come to this Hon'ble Court with clean hands and the Plaintiff is guilty of suppression of true and material facts from the Hon'ble Court and therefore the plaintiff even cannot be heard on merits. The plaintiff Itself has admitted and acknowledged **the receipt of substantial amount of payment of Rs.43,19/99,558/-** from the Defendant, but the Plaintiff willfully and knowingly concealed and did not include various heads of expenses to extract money from the Defendant. The Plaintiff did not disclose the amount of **Stamp Duty of Rs. 2,10,91,768 Approx.** (rate of 5% on the above said amount Rs.42,18,35,374/-) in the certificate of computation of outstanding dues by Chartered Accountant of the Plaintiff. There are such others expense heads which are disputed between the Parties or the Plaintiff has not disclosed in the present suit. The Defendant vehemently disputes the computation of outstanding dues and Submits that the present suit is filed to arm-twist the Defendant by seeking temporary/mandatory/Permanent injunction by restraining Defendant from alienating/ creating third party right which is abuse of the, process of law.”*

25. In the written statement again, the defendant had refuted the claim of any dues of ₹12.76 crore. In paragraph 11 of the written statement, following was pleaded:

“11. That the contents of Para No. 11 of the plaint as stated are wrong and denied. It is totally wrong and denied that the defendant was liable to pay any alleged amount of Rs. 12,76,25,442/- as alleged. It is totally wrong and denied that any balance amount is left to be paid or that: the defendant is required to pay any amount. The; allegations of the plaintiff are totally false, frivolous and baseless to its positive knowledge, no such amount is due against the defendant as falsely claimed by the plaintiff. It is submitted that the Defendant has not filed its books of accounts. Profit & Loss Account and Balance Sheet for the financial year 2019- 2020, 2020-2021 and 2021-2022.”

26. There is no denial to the fact Civil Suit has been filed by the operational creditor prior to issuance of demand notice. The record of pendency of the Suit was very much brought into the notice of adjudicating authority in reply to demand notice as well as in reply to Section 9 application. The pleadings in the suit clearly indicate that in the suit also the operational creditor who was plaintiff has pleaded that amount of ₹12.76 crore is due on the defendant i.e., the operational creditor and due to non-payment of said amount, the mandatory injunction be issued against the defendant. The demand notice is also for the same amount of ₹12.76 crore which, according to the operational creditor is due. The written statement was filed in the suit and the claim of the plaintiff was refuted. The pre-existing dispute has arisen between the parties which is adjudication before the Civil Court. The scheme of Sections 8 & 9 indicate that if any Suit or arbitration proceedings have been filed before the receipt of the demand notice and notice of dispute has been issued by the corporate debtor, the adjudicating authority is to reject the Section 9 application by virtue of Section 9(5)(ii)(d). Section 9(5)(ii)(d) is as follows:

“9. Application for initiation of corporate insolvency resolution process by operational creditor.–

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

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

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

27. In the present case, both notice of dispute has been received by the operational creditor and in the reply to the demand notice, it was brought into the notice of the operational creditor about the pendency of suit as contemplated by Section 8(2)(a) thus as per legislative scheme under Sections 8 & 9 where a Civil Suit is pending between the parties in which the same amount is claim by the operational creditor as amount in default for which demand notice has been issued, there was clearly a pre-existing dispute between the parties.

28. Learned counsel for the appellant in support of his submissions have relied on the judgement of the Hon’ble Supreme Court in **‘Rajratan Babulal Agarwal’ Vs. ‘Solartex India Private Limited & Ors.’** reported in **[(2023) 1 SCC 115]**. Hon’ble Supreme Court in the above case referring to the earlier judgement of the Hon’ble Supreme Court in **‘MobiloX Innovations Pvt. Ltd.’** (*supra*) in paragraph 73 and 74 laid down following:

“73. *In MobiloX [MobiloX Innovations (P) Ltd. v. Kirusa Software (P) Ltd., (2018) 1 SCC 353 : (2018) 1 SCC (Civ) 311], this Court took the view that one of the objects of*

IBC in regard to operational debts is to ensure that the amount of such debts which is usually smaller than the financial debts does not enable the operational creditor to put the corporate debtor into the insolvency resolution process prematurely. It is further declared that it is for this reason that it is enough that a dispute exists between the parties. It is further the law as declared in Mobilox [Mobilox Innovations (P) Ltd. v. Kirusa Software (P) Ltd., (2018) 1 SCC 353 : (2018) 1 SCC (Civ) 311] that Section 5(6) IBC excludes the expression bona fide which qualified the words suit or arbitration proceedings in Section 5(4) under the Bankruptcy Law Reforms Committee Report. All that is required is to see whether there is a plausible contention which must be investigated. This Court has gone on to declare that a “patently feeble” legal argument may not be a plausible dispute. We respectfully agree. We are unable to find that in the facts of this case, that the case set up by the second respondent was a patently feeble legal argument.

74. *Again, following what this Court held in Mobilox [Mobilox Innovations (P) Ltd. v. Kirusa Software (P) Ltd., (2018) 1 SCC 353 : (2018) 1 SCC (Civ) 311], we do not have to go to the extent of finding that the second respondent is likely to succeed. Still further, finding guidance from Mobilox [Mobilox Innovations (P) Ltd. v. Kirusa Software (P) Ltd., (2018) 1 SCC 353 : (2018) 1 SCC (Civ) 311], the examination of the merits need not transcend the limited extent which we have undertaken which is to find that the case of the second respondent is not to be brushed aside as spurious, hypothetical or illusory. We cannot find that the dispute as projected by the appellant on behalf of the second respondent does not exist. In the teeth of the e-mails which we have adverted to, and the inference sought to be drawn in particular as also the lab reports produced, no doubt, from the second respondent's labs, we cannot also find that the case of the corporate debtor is wholly unsupported by evidence. As to the acceptability of these materials and the weight to be attached to them, needless to say, we have not pronounced on the same.”*

29. Hon’ble Supreme Court in the above case has held that it is enough that a dispute exists. The observation which has been given in **‘Mobilox**

Innovations Pvt. Ltd.’ (*supra*) that adjudicating authority has to look into as to whether there is a plausible contention which must be preceded and the defence is not patently feeble unsupported by any evidence. Present is a case where defence raised by the corporate debtor cannot be said to be a feeble defence or unsupported by evidence. The above judgement of the Hon’ble Supreme Court clearly supports the submission of the appellant in the present case.

30. Learned counsel for the respondent in support of his submission has relied on large number of judgement of this Tribunal to contend that present was a case where adjudicating authority could not have dismissed the Section 9 application as on the ground of pre-existing dispute.

31. Learned counsel for the appellant has relied on judgement of this tribunal in **‘iValue Advisors Private Limited’ Vs. ‘Srinagar Banihal Expressway Ltd.’** reported in [2020 SCC OnLine NCLAT 522]. The above was a case where this Tribunal has held that on the ground that operational creditor has went to MSME Authorities was not ground for a pre-existing dispute. It is useful to notice paragraphs 9 to 11 of the judgement which are as follows:

“9. We have heard Counsel for both sides and going through the matter, we find that the Adjudicating Authority erred in concluding that because Operational Creditor had moved the MSME Authorities, it showed pre-existing dispute. The Appellant had a relief open under the MSME Act and only because the Appellant moved the Authority under MSME Act, it does not mean that there is a pre-existing dispute. The dispute raised by the Appellant before the MSME was that it had dues

to recover and that the Respondent has not paid. This by itself does not mean that there is pre-existing dispute as far as the Respondent is concerned. Under the IBC Section 5 Sub-Section (6), the dispute is defined as under:—

“(6) “dispute” includes a suit or arbitration proceedings relating to—

- (a) the existence of the amount of debt;
- (b) the quality of goods or service; or
- (c) the breach of a representation or warranty”

10. Section 17 of MSME Act reads as under:—

“17. Recovery of amount due.—For any goods supplied or services rendered by the supplier, the buyer shall be liable to pay the amount with interest thereon as provided under section 16”

Sub-Section (1) of Section 18 of that Act reads as under:—

“(1) Notwithstanding anything contained in any other law for the time being in force, any party to a dispute may, with regard to any amount due under section 17, make a reference to the Micro and Small Enterprise Facilitation Council.”

Thus the context of the word “dispute” in Section 18 takes colour from Section 17 of MSME Act. It is different from context of Section 5(6) read with Section 8 of IBC.

11. At present, nothing is shown that there was any pre-existing dispute raised by the Respondent with regard to the services rendered by the Appellant. When this is so, only because the Appellant went to the MSME Authorities was no ground for the Adjudicating Authority to reject the Application under Section 9. A further communication from the Authority has been placed on record by the Appellant at Page - 89. Although the subsequent letter shows that the conciliation proceedings had yet to start. We will go a little ahead so that even if the conciliation proceeding was to start, if the Respondent did not raise dispute regarding the supply of goods or quality of services, still it would be open for the Adjudicating Authority to look into the question whether or not dispute as covered under the IBC, is attracted.”

32. This Tribunal took the view that the mere fact that appellant had moved the authority under MSME Act it cannot be said that there is a pre-existing dispute. It was held that the issue raised by the operational creditor before MSME that it has due to recover itself does not mean that there is a pre-existing dispute. There can be no dispute to the above proposition that merely filing or approaching the MSME Authority does not tantamount to accept that there is a pre-existing dispute. In the present case, pre-existing dispute exist since the claim was raised by the operational creditor by filing a Civil Suit in which written statement was filed and claim has been disputed. Dispute is still pending adjudication before the Civil Court and Civil Suit was filed, much before the demand notice, thus the said judgement in no manner help the appellant.

33. Next judgement relied is **‘Henan Boom Gelatin Co. Ltd.’ Vs. ‘Sunil Healthcare Limited’** reported in [2021 SCC OnLine NCLAT 5505]. Learned counsel for the appellant has placed reliance on the paragraph 23 of the judgement, where this Tribunal held that the corporate debtor is not to raise bogie of dispute but there has to be a real substantial dispute. In paragraph 23, following was laid down:

“23. The pre-existing dispute which may be ground to thwart an Application under Section 9 has to be real dispute a conflict or controversy, a conflict of claims or rights should be apparent from the reply as contemplated by Section 8(2). The Corporate Debtor is not to raise bogie of disputes but there has to be real substantial dispute. It is true that the Adjudicating Authority has to see the reply and the contents therein and has not to enter into adjudication of the dispute. He is only required to look into the substance of the

pleading to find out whether there is a real dispute is decipherable from the reply.”

34. There can be no dispute to the proposition laid down by this Tribunal in the above paragraph. But in the facts of the present case, there is a real and substantial dispute. Dispute between the parties was clearly reflected in the judgement of the Punjab and Haryana High Court relied by the adjudicating Authority as well as in the Civil Suit and written statement of the corporate debtor as noted above.

35. Respondent has further relied on the judgement of this Tribunal in the matter of **‘Mukul Agarwal’ Vs. ‘Royal Resinex P. Ltd. & Anr.’** reported in **[2022 SCC OnLine NCLAT 255]**. In the above case, operational creditor has filed a Civil Suit against a corporate debtor for recovery, which was decreed and execution petition was also filed. The above facts have been noticed in paragraph 2(ii) of the judgement, which is as follows:

“2. Brief facts and sequence of events necessary to be noticed for deciding this appeal are :

(ii) The operational creditor filed a Civil Suit No. 149 of 2015 against the corporate debtor for recovery of amount of Rs. 16,44,500. The suit was decreed by the Additional District Judge, Rohini Court vide judgment and order dated September 8, 2016 decreeing the suit for recovery of Rs. 16,44,500 along with interest at 12 per cent. per annum. The operational creditor filed execution petition, which was transferred to the Court of District and Sessions Judge, South District for execution of the decree being case No. 424 of 2019.”

36. On the basis of the aforesaid fact, in the above case the objection was raised that since the execution of decree is pending, Section 9 application

could not be filed. The said argument was rejected and this Tribunal laid down following in paragraph 16:

“16. In the above case, it is held that the provisions of the Code namely under section 238 shall have an overriding effect. Hence the application under section 9 filed by the operational creditor cannot be defeated on the ground that any application for execution was pending, more so, when in spite of decree passed on September 8, 2016 no payment was made by the corporate debtor.”

37. The proposition has been laid down by this Tribunal in the above case that mere pendency of the execution petition is no ground to defeat the Section 9 proceeding. Section 9 proceeding is special remedy provided under the IBC. The above judgement also in no manner helps the respondent in the present case.

38. Another judgement relied by the respondent is **‘Pedersen Consultants India P. Ltd.’ Vs. ‘Nitesh Estates Ltd.’** reported in **[2019 SCC OnLine NCLAT 422]**. Above was a case where Section 9 application was rejected on the ground of pre-existing dispute. In paragraph 1 of the order, the facts and the order of the adjudicating authority has been noticed in following words:

“1. The appellant- "Pedersen Consultants India P. Ltd." ("operational creditor") filed an application under section 9 of the Insolvency and Bankruptcy Code, 2016 ("I and B Code" for short) against "M/s. Nitesh Estates Ltd." ("corporate debtor"). The Adjudicating Authority (National Company Law Tribunal), Bengaluru Bench, Bengaluru, discussing the claim and counter claim of the parties, rejected the application by impugned order dated October 5, 2018—(Pedersen Consultants India P. Ltd. v. Nitesh Estates Ltd. (2019) 8 Comp Cas-OL 596 (NCLT)) with following observations (page 602):

“The above narration of facts discloses that there are various disputed question of fact with regard to the alleged debt and default raised in the petition. The contention of the respondent that the defence raised by the respondent is moonshine cannot be accepted. On the other hand, the petitioner-company itself could not prove that the debt and default in question is beyond doubt. The Tribunal, cannot enter into enquiry with regard to the disputed questions, in a case filed under the IBC, 2016, which is summary in nature, and the issues to be primarily decided basing on the principles of natural justice. As stated supra, there are several clauses in the agreement in question, and the respondent, on the contrary made claim against the petitioner. Ultimately, the parties in the first instance have to reconcile their own statement of accounts before approaching the Tribunal to invoke provisions of the IBC, 2016. The petitioner, instead of finalising the disputed amounts, has filed the instant company petition on untenable grounds. The question of excess payment, and set-off as claimed by the respondent has to be examined in an appropriate proceeding in a case filed in accordance with the law, and the issue cannot be adjudicated in the instant company petition. Therefore, we are of considered opinion that there is a dispute with regard to debt in question, and thus it is not a fit case to admit.”

39. This Tribunal, however, has observed that it is always open for the corporate debtor to point out existence of the dispute and it also referred to the judgement of the Hon’ble Supreme Court in **‘Mobilox Innovations Pvt. Ltd.’ (supra)**. In the above case the corporate debtor has disputed the claim stating that it has counter claim against the appellant. In the said background, this Tribunal held that claim means a right to payment even if it is disputed. This Tribunal further held that there was no record to suggest pre-existence of dispute. In paragraph 10 to 12, following was held:

“10. *From the aforesaid findings, it is clear that the claim means a right to payment even if it is disputed. Therefore, merely because the "corporate debtor" has disputed the claim by showing that there is certain counter claim, it cannot be held that there is pre-existence of dispute.*

11. *In the present case, as we have observed that there is no record to suggest pre-existence of dispute with regard to the services rendered by the appellant, we hold that the application under section 9 should not have been rejected by the Adjudicating Authority on the ground that the dispute about the quantum of payment cannot be determined.*

12. *The respondent disputed that the alleged debt is not the amount as shown in the Form. However, on mere dispute of amount, the application under section 9 cannot be rejected, as in terms of section 3 (6) which defines "claim" to mean a right to payment even if it is disputed. The hon'ble Supreme Court in *Innoventive Industries Ltd. v. ICICI Bank* (2017) 205 Comp Cas 57 (SC) ; (2018) 1 SCC 407 noticed the definition of "claim" and held that even if the right of payment is disputed, the Code gets triggered the moment default is of rupees one lakh or more (section 4). In the circumstances, in absence of any pre-existing dispute, it was not open for the Adjudicating Authority to reject the application under section 9.”*

40. This Tribunal in the above facts and circumstances has set aside the order of the adjudicating authority and directed for admission of Section 9 application. In the above case there was no record of any pre-existing dispute and corporate debtor has only disputed the claim saying that he has a counter claim. Thus, the above judgement on its own facts does not in any manner supports the submission of the respondent in the facts of the present case.

41. We thus are of the view that present is a case where pre-existing dispute between the parties was writ large, more so Civil Suit had already been filed by the operational creditor where same amount was treated to be due on the

corporate debtor for which demand notice has been subsequently issued. The Suit was filed more than one and a half year before issuance of demand notice in which Suit written statement was also filed, disputing the claim set up in the plaint. We thus are satisfied that present is a clear case of pre-existing dispute between the parties.

42. The legislative scheme under Sections 8 & 9 provides for admission of Section 9 application when there is no pre-existing dispute and there is debt which is unpaid. Section 9 proceedings cannot be converted in proceeding for adjudication of dispute between the parties. In Section 9 proceeding the Court is to enter as per legislative scheme under Sections 8 & 9 that whether there is a pre-existing dispute between the parties and if so, no insolvency proceeding under Section 9 can be initiated against the corporate debtor. Present was a case where there was pre-existence of dispute and Civil Suit was filed by the operational creditor itself, much prior to giving demand notice which is pending in the Civil Court. It was not the case where adjudicating authority could have admitted Section 9 application. Adjudicating authority committed an error in admitting Section 9 application in the facts of the present case.

43. We thus are satisfied that the adjudicating authority has noticed the contention of the corporate debtor regarding pendency of Civil Court. Adjudicating authority has brushed aside the said argument observing that the Suit cannot be come in the way of prosecuting Section 9 petition. The order passed by the adjudicating authority is thus unsustainable.

44. In view of the forgoing discussions and conclusions, the order passed by the adjudicating authority admitting Section 9 application is unsustainable and deserves to be set aside. In the result appeal is allowed, order dated 21.08.2024 passed by the adjudicating authority is set aside. Section 9 application filed by the operational creditor is dismissed. We make it clear that despite dismissal of Section 9 application, it shall be open for the operational creditor and the corporate debtor to raise all their pleas and defences in the Civil Suit, which is pending adjudication.

Appeal is allowed accordingly. Connected pending IAs, if any, are disposed of.

Parties shall bear their own costs.

**[Justice Ashok Bhushan]
Chairperson**

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

NEW DELHI

23rd September, 2025

himanshu