

**IN THE NATIONAL COMPANY LAW TRIBUNAL, NEW DELHI**  
**COURT-V**

**Item No.-205**  
IB-741/ND/2022

**IN THE MATTER OF:**

M/s Swastik Armaan Steels Pvt. Ltd.

**....Applicant**

**Vs.**

M/s Food And Biotech Engineers India Pvt. Ltd.

**.....Respondent**

**SECTION**

U/s 9 IBC

**Order delivered on 16.10.2023**

**CORAM:**

**SHRI P.S.N PRASAD,  
HON'BLE MEMBER (JUDICIAL)**

**DR. BINOD KUMAR SINHA,  
HON'BLE MEMBER (TECHNICAL)**

**PRESENT:**

For the Applicant :

For the Respondent :

**ORDER**

Order pronounced in open court vide separate sheets. IB-741/ND/2022 stands **admitted.**

**Sd/-**  
**(DR. BINOD KUMAR SINHA)**  
**MEMBER (T)**

**Sd/-**  
**(P.S.N PRASAD)**  
**MEMBER (J)**

**IN THE NATIONAL COMPANY LAW TRIBUNAL  
COURT-V, NEW DELHI**

**IB NO. 741/(ND)/2022**

*An Application under Section 9 of the Insolvency and Bankruptcy Code, 2016 read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016.*

**IN THE MATTER OF:**

**M/s Swastik Armaan Steels Private Limited**

Through its Director, Mr. Vikas Aggarwal  
Office At- C-177, 1<sup>st</sup> Floor, Mansarovar Garden,  
New Delhi- 110015

**...Operational Creditor**

**Versus**

**M/s Food and Biotech Engineers India Private Limited**

Plot No. 41, Flat No. C-2, Second Floor,  
Tajpur Road Molarband Extension,  
Near Cosmos School (Badarpur)  
New Delhi DL 110044

**...Corporate Debtor**

**Order Delivered on: 16.10.2023**

**CORAM:**

**SHRI P.S.N. PRASAD, HON'BLE MEMBER (JUDICIAL)**

**DR. BINOD KUMAR SINHA, HON'BLE MEMBER (TECHNICAL)**

**APPEARANCES:**

**For the Applicant** :Adv Anup Kumar, Adv Shivam Kumar, Adv Neha Jaiswal,  
Adv Shruti Singh

**For the Respondent:** Sr. Advocate Virender Ganda N.K. Sharma, Nitin Sharma,  
Vinod Kumar Mr. Aryan Debmitra, Adv, Rahul Narula, Adv

## ORDER

### PER: DR. BINOD KUMAR SINHA, MEMBER (TECHNICAL)

1. This is a Company Petition filed under Section 9 of the Insolvency and Bankruptcy Code, 2016 (**'the Code'**) read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 by Mr. Vikas Aggarwal, Director of **M/s Swastik Armaan Steels Private Limited ('Operational Creditor')** duly authorized for initiation of Corporate Insolvency Resolution Process (**'CIRP'**) against **M/s Food and Biotech Engineers India Private Limited ('Corporate Debtor')**.
2. **M/s Swastik Armaan Steels Private Limited** (Operational Creditor), having its CIN- U51504DL2012PTC231560 and office at C-177, 1<sup>st</sup> Floor, Mansarovar Garden, New Delhi- 110015. **M/s Food and Biotech Engineers India Private Limited** (Corporate Debtor) is a company registered under the Companies Act, 1956 [CIN- U74210DL1999PTC101572], having its registered office at Plot No. 41, Flat No. C-2, Second Floor, Tajpur Road Molarband Extension, Near Cosmos School (Badarpur) New Delhi DL 110044 IN. The Corporate Debtor has Authorized Share Capital of Rs. 2,00,00,000 (Rupees Two Crores only) and Paid-Up Share Capital of Rs 1,56,98,610 (Rupees One Crore Fifty-Six Lakh Ninety-Eight Thousand Six Hundred & Ten only).
3. The present petition was filed on 28.09.2022 before this Adjudicating Authority by Mr. Vikas Aggarwal, the Director of the Operational Creditor's entity, duly authorized to initiate Corporate Insolvency Resolution Process (**'CIRP'**) proceedings under Section 9 of the Insolvency and Bankruptcy Code, 2016 (**'Code'**). The total amount claimed is Rs. 13,72,99,149 (Rupees Thirteen Crores Seventy-Two Lakhs Ninety-Nine Thousand One Hundred Forty-Nine only), which includes the Principal Amount of Rs. 7,97,36,990.60 (Rs. Seven Crore Ninety-seven Lakhs Thirty-six thousand nine hundred ninety & sixty paisa) along with an interest of 18% per annum (amounting to Rs, 5,75,62,158.01 as on 12.09.2022) from the respective date of default of each invoice.

**4. Submissions by the Ld. Counsel appearing on behalf of the Operational Creditor.**

- a) That the Operational Creditor deals in Iron, Steel etc. amongst other things and it was supplying various different items of the same nature (as have been specified in the respective unpaid Invoices raised) to Food and Biotech Engineers India Private Limited. The transactions on account of which the Debt fell due took place in the year 2018 & 2019 wherein several Invoices were raised by the Operational Creditor. The first such Invoice on account of which Debt fell due was issued on 09.04.2018 and the last such unpaid invoice was issued on 22.03.2019. Given the continuing nature of this Contract for supply, it was mutually agreed between the parties that payment shall be made by the Corporate debtor within 30 days of issue of each such invoice, however, no payment has been made by the Corporate Debtor till date. That the Operational Creditor has provided goods to the Corporate Debtor & thereby the debt due is an operational debt as it is the money due for providing such goods and materials.
- b) That despite the timely and seamless delivery of goods to the Corporate Debtor and no disputes having been raised by the Corporate Debtor for the same or any other transaction, the due amount accruing as per the invoices raised has not been paid till date to the Operational Creditor. Despite several reminders, the entire due amount has not been paid to Operational Creditor.
- c) That in relation to the debt, the Operational Creditor had received twenty-nine payment cheques from the Corporate Debtor, however, all the cheques, upon their presentation, were returned unpaid by the Bank with comment of either 'Exceeds Arrangements' or 'Drawers Signature Differ'. That the Operational Creditor was constrained to initiate proceedings against the Corporate Debtor before the Faridabad District Court, Faridabad, Haryana, under Section 138 of the Negotiable Instruments Act, 1881, which is pending as of today.
- d) That due to non-payment of the dues, M/s Swastik Armaan Steels Private Limited was constrained to issue a notice under Section 8 of the Insolvency

and Bankruptcy Code, 2016 dated 27.08.2022 for repayment of the total defaulted principal debt of Rs. 7,97,36,990.60 (Rs. Seven Crore Ninety-Seven Lakhs Thirty-Six Thousand Nine Hundred Ninety & Sixty Paisa) along with an interest of 18% per annum [Amounting to Rs. 5,75,62,158.01 as on 12.09.2022] from the respective date of default for multiple invoices that were raised on and between 09.04.2018-22.03.2019. The Operational Creditor in its demand notice also mentioned that:

*“3. If you dispute the existence or amount of unpaid operational debt (in default) please provide the undersigned, within ten days of the receipt of this letter, of the pendency of the suit or arbitration proceedings in relation to such dispute filed before the receipt of this letter/ notice.*

*4. If you believe that the debt has been repaid before the receipt of this letter, please demonstrate such repayment by sending to us, within ten days of receipt of this letter, the following: - (a) An attested copy of the record of electronic transfer of the unpaid amount from the bank account of the corporate debtor; or (b) An attested copy of any record that M/s Swastik Armaan Steels Private Limited has received the payment.”*

e) The Corporate Debtor never raised any pre-existing dispute in relation to the Claim set out in the Demand Notice dated 27.08.2022, however, the Corporate Debtor vide its reply through Email dated 08.09.2022 to the Operational Creditor's Notice dated 27.08.2022, has made concocted statements, which are vehemently denied by the Operational Creditor. On 08.09.2022, the Corporate Debtor sent its reply through an email along with a ledger (01.04.22 to 08.09.22) with a vague statement that:

*“Please be informed that we have no dues in our book of accounts in the name of Swastik Armaan Steels Pvt. Ltd. Rather an amount of Rs. 76,42,883.39 is receivable from Swastik Armaan Steels Pvt. Ltd.in our books. Copy of Ledger is being attached for your necessary review...”*

f) It is relevant to mention herein that neither the Corporate Debtor brought to the notice of the Operational Creditor about the existence of any dispute (e.g.

record of the pendency of any suit or arbitration proceedings filed before the receipt of the demand notice or invoice in relation to such dispute) nor the Corporate Debtor made the repayment to the Operational Creditor of the unpaid operational debt. It is re-iterated that the ledger supplied by the Corporate Debtor was only for the period from 01.04.2022 to 08.09.2022. Corporate Debtor did not take a plea that it has repaid the amount in past.

g) That the Corporate Debtor, in its reply dated 15.12.2022, for the first time stated that it has adjusted some amounts in its ledger owing to the poor and inferior quality of goods supplied by the Operational Creditor. Further, in Para 15 in its reply, the Corporate Debtor has stated that:

“...further, an amount of Rs.6,06,92,270 is rightfully withheld by the respondent on pretext of inferior quality goods supplied to respondent. The said amount has been withheld by the respondent only after when the payments amounting to Rs.6,06,92,270 was withheld by various buyers stating the goods supplied by respondent company is made of inferior quality raw material.”

h) It is submitted that the Corporate Debtor's disclosure in the year 2022 (after filing S.9 application) of withholding the aforesaid amount of more than six crores for supply of goods by the Operational Creditor during 2014-2018 on the false pretext of it being inferior quality is an afterthought, unfounded and illegal just for the purpose to defeat the Operational Creditor's claim. There was no complaint to the Operational Creditor, whatsoever during 2014-18 or even after issuance of the demand notice with regard to the quality of goods supplied by the Operational Creditor.

i) That on 24.01.2023, this Adjudicating Authority in order to have clarity about the Corporate Debtor's Ledger account had appointed Mr. Vijay Kumar Gupta, C.A as a Court Commissioner with the consent of both the parties to reconcile the Ledger for the financial year 2022-2023 and directed him to submit his report within two weeks as to whether the Corporate Debtor has paid/remitted the amount of invoices and payments included in Section 8(1) notice.

- j) That the Court Commissioner submitted his report dated 09.02.2023 before this Adjudicating Authority wherein, he observed that:
- “12. b) That upon careful scrutiny of the documents provided to me for the assessment of the ledgers it can be observed that all transactions (including the payments and sales transactions) up to the date 30.06.2022 are correctly mentioned by the Corporate Debtor in their ledger.*
- d) That the Corporate Debtor has failed to provide reasonable explanations for setting off the amount due towards the Operational Creditor with the amount due from its customers as well as Swastik Armaan Proteins.*
- g) That total wrongful adjustments of Rs. 8,51,92,270.00 (Rupees Eight Crores Fifty-One Lakhs Ninety-Two Thousand Two Hundred and Seventy only) have been made by the Corporate Debtor.*
- i) That a balance of Rs. 7,75,49,386.61 (Rupees Seven Crores Seventy-Five Lakhs Forty-Nine Thousand Three Hundred Eighty-Six and Sixty-One paisa) is due from the Corporate Debtor towards the Operational Creditor.*
- k) In view of the aforesaid, the Operational Creditor’s claim against the Corporate Debtor has also been verified and substantiated by the Court Commissioner appointed by this Adjudicating Authority.
- l) That as of today, the total amount of default is Rs. 13,72,99,149/- (Rs. Thirteen Crores Seventy-Two Lakhs Ninety-Nine Thousand One Hundred Forty-Nine only), which includes the Principal Amount of Rs. 7,97,36,990.60 (Rs. Seven Crore Ninety-Seven Lakhs Thirty-Six Thousand Nine Hundred Ninety & Sixty Paisa), along with an interest of 18% per annum [Amounting to Rs. 5,75,62,158.01 as on 12.09.2022] from the respective date of default. Hence, the present application.

## **5. Submission by the Learned Counsel appearing on behalf of the Corporate Debtor**

- a) It is submitted that the respondent is a non-government private limited company engaged in the business of designing, engineering, consulting and

manufacturing of all types of equipment for dairy, food processing, chemical, distillation and allied industries whereas the Operational Creditor deals in iron, steel etc. and has been supplying various items of the same nature to Corporate Debtor since 2011. Moreover, Mr. Vikas Aggarwal Managing Director of the Operational Creditor i.e. M/s Swastik Armaan Steel private Limited with his wife are also a shareholder in the respondent firm with 14.1% of total holdings 6.37% and 7.64% respectively. Therefore, it is quite evident that the transaction in regular course of business with Operational Creditor were quite transparent as the Director of the Operational Creditor is also a major shareholder in the respondent company as well.

- b) That the respondent company is not at all surprised from this present frivolous petition filed by the Operational Creditor under section 9 of Insolvency and Bankruptcy Code, 2016, just to dismantle their reputation and business when in fact not even a single penny is due towards the Operational Creditor because the managing director of the Operational Creditor, also major shareholder in the respondent company (including his wife's share) have earlier also opened and registered a fake firm by name and style of FOOD AND BIOTECH on 08.06.2019 with the same intent. The respondent firm have also sent a legal notice to Mr. Vikas Aggarwal in regards to the same on 22<sup>nd</sup> September 2022. The copy of the said legal notice and its reply wherein it is admitted by the Managing Director of the Operational Creditor that he was engaged in business of Steel under the trade name FOOD AND BIOTECH along with GST report of Food and Biotech are also placed on record. The Bank account of the fake firm opened by the Managing Director of the operational creditor is still operative. Moreover, the respondent company through its director have also filed a complaint before Gadhuri Thana, District Palwal, Haryana on 07.09.2022 as well as in regards to a fraud of Rs. 3,07,55,006 committed by Managing Director of Operational Creditor by selling a property of respondent company at undervalued price

intentionally and knowingly. The Copy of the Complaint dated 07.09.2022 is placed on record.

- c) That on 14.09.2022, the respondent company through its director, filed a complaint against the Managing Director of the Operational Creditor before the Economic Offence Wing under Office of Superintendent of Police, Palwal, Haryana. Thereafter, the Director of the respondent company has also given their statement before Economic Offence Wing on 28.09.2022, wherein it was stated that Mr. Vikas Aggarwal, managing director of the operational creditor have opened a fake firm with the name and style of FOOD & BIOTECH with malafide intentions against the respondent company. It is also mentioned in the said statement that the operational creditor has not withdrawn the cases filed under section 138 of Negotiable Instrument Act, 1881 even after receiving the payments against said security cheques. Further, it was stated that Mr. Vikas Aggarwal has been involved in similar kinds of activities with various other entities and same nature of complaint have been filed earlier against him.
- d) On the other hand, the Operational Creditor has also supplied inferior quality of goods which have caused a huge loss to the reputation and business of the respondent. The Respondent have also been informed by their numerous buyers that the quality of the products was inferior and some needs replacement as well. Various buyers of the respondent have also withheld the huge payments on pretext of the same as the products made out of the raw material supplied by the operational creditor could not even complete the warranty period and issued debit notes/letters in regards to same.
- e) That in the month of May 2019, 29 cheques mentioned in the present petition was issued to the operational creditor as security for the pending payments. Thereafter, the operational creditor presented the cheques suddenly without intimating the respondent and the said cheques were dishonored. Subsequently, the operational creditor filed a case under section 138, 141 and, 142 of the Negotiable Instrument Act, 1881 before Faridabad District

Court, Faridabad. That the said proceedings are still pending, whereas the amount for which the security cheques were issued has been paid by the respondent entirely between the period November 2019 to May 2022. Further in this regard, the respondent sent letters informing the same to the operational Creditor and requesting to withdraw the cases filed under section 138, 141 and 142 of the Negotiable Instrument Act, 1881 as the amount has been paid by the respondent.

- f) That, in terms of the order dated 24.01.2023, Mr. Vijay Kumar Gupta, Chartered Accountant, was appointed as a Court Commissioner by this Adjudicating Authority for reconciliation of Ledger account for the financial year 2022-2023 of Operational Creditor and Corporate Debtor and directed to submit a report as to Whether the Corporate Debtor has paid/remitted the amount of invoices and payments included in Section 8(l) notice. The Corporate Debtor expressly denies the findings of the Court appointed Commissioner. It is also evident that the Court commissioner has not considered the submission/clarification given by the Corporate Debtor in true spirit. Further, it has been observed that the Court Commissioner has come to the conclusion that Rs.7,75,49,386 is due from Corporate Debtor whereas in this present application under Section 9 of IBC 2016, the Operational Creditor is demanding Rs.7,97,36,990 from Corporate Debtor. The Court Commissioner in his report have not mentioned anything in this context. So, mere silence of the court commissioner regarding the said difference of Rs. 21,87,604 in his report has created a logical doubt on intent of the Court Commissioner.
- g) It is submitted that the intent behind the direction to submit the report was as to Whether the Corporate Debtor has paid/remitted the amount of invoices and payments included in Section 8(1) notice whereas the Court Commissioner has nowhere concluded expressly that the invoices mentioned in demand notice was unpaid rather just gave the conclusion that

Rs.7,75,49,386 is to be paid but not mentioned Whether the debt is due on account of invoices mentioned in demand notice or not.

- h) The Court Commissioner while following his assumptions failed to consider that the all the 53 invoices pertains to financial year 2018-19 and the opening balance of the financial year 2022-23 carried forward from previous financial year is Rs.3,54,88,966 only and Rs.8,37,26,158 out of Rs. 11,92,15,124 were transferred from deferred account to main account which makes it evident that the invoices generated in financial year 2018-19 by the operational creditor was already paid except the amount of Rs. 3,54,88,966 which is ultimately adjusted from the payment of Rs.3,79,40,000 by the Corporate Debtor in this present financial year till 31.05.2022.
- i) The Court Commissioner failed to acknowledge the fact that the opening balance of financial year 2022-23 carried forward from previous financial year was Rs.3,54,88,966 only. The amount of Rs. 8,37,26,158 transferred from deferred account to main account on 07.04.2022 is a retention amount which Corporate Debtor used to keep as a security against material supplied by the operational creditor and is adjusted as per the status of the project. It is also pertinent to mention here that on an average a project gets completed in 12 to 15 months. In addition to that, 12 months' warranty is also provided by Corporate Debtor. Therefore, Corporate Debtor closes the account after expiry of Installation and warranty period i.e. 24 to 27 months.
- j) In present scenario, clients of Corporate Debtor debited operational losses to Corporate Debtor on account of inferior quality material used in manufacturing of project which was obviously supplied by operational creditor. Therefore, in accordance with the mutually agreed terms, the Corporate Debtor rightfully adjusted amount transferred from the deferred account in main account against the inferior quality material supplied and payment withheld by our clients, which was ultimately the purpose of retaining some amount as deferred to safeguard the Corporate Debtor where low quality material supplied by operational creditor. The Court

Commissioner has considered opening balance carried from previous financial year and balance transferred from deferred account as opening balance which is wrong.

- k) It is submitted that the invoices mentioned in the demand notice has been paid by the Corporate Debtor entirely and all the payments towards the said invoices is made through banking channels before filing of this present application under section 9 of Insolvency and Bankruptcy Code, 2016. The proof of payments of invoices are also placed on record in Annexure R8 and Annexure R9 of the reply of the Corporate Debtor.
- l) Further after giving sufficient clarification in regards to payment made to Swastik Armaan Proteins amounting to Rs.2,45,00,000 against the debt on the direction of the director of Swatik Armaan Steels Pvt Ltd. who is also a proprietor in Swastik Armaan Proteins, the Court Commissioner has concluded that the said payment does not relate to this current matter which is wrong. How the Court Commissioner came to the conclusion that the said payment does not relate to current matter without any firm basis is highly questionable. Further, it was also brought to the notice of Court Commissioner that Corporate Debtor did not have a single transaction with M/s Swastik Armaan Proteins which makes it clear that the sum of Rs.2,45,00,000 was paid by Corporate Debtor to the M/s Swastik Armaan Proteins on direction of Director of M/s Swatik Armaan Steel Pvt. Ltd. who is also the Proprietor in M/s Swastik Armaan Proteins, in order to discharge the liability towards the Operational Creditor. The payments have also been made through banking channel and the same is annexed as Annexure R9 of the reply of Corporate Debtor.
- m) That the Court Commissioner's conclusion regarding the debit notes is also questionable as during the meeting, the representatives of Corporate Debtor have submitted and clarified that Issuance of debit notes in regards to inferior quality material is a normal practice in course of business with operational creditor and the Corporate Debtor have also issued various debit notes in

previous financial years and the same has been recorded in the books of accounts of operational creditor as deferred payment. No objection has been raised by the Operational Creditor then. When the same practice of issuance of debit notes in regards to rejected material have been followed in normal course of business with operational creditor then how the issuance of debit notes in this present financial year looks highly suspicious. The Corporate Debtor has placed on record Annexure R13 in the reply to support this present contention. It is also pertinent to mention herein that the debit notes does not relate to the period 2018-19 and invoices issued in the said period rather it is related to lumpsum/deferred withheld as a security in regards to running business amount.

- n) The Corporate Debtor also reiterates that the director of operational creditor is using a web of companies including Fake firm in the name of Food & Biotech to manipulate the books of accounts by entering bogus transactions as mentioned in above paragraph. So, in the interest of justice, it is necessary to verify the ledger account of operational creditor along with web of companies, before coming to any conclusion. Therefore, the Corporate Debtor have apprehensions that the books of accounts maintained by operational creditor are fictitious and the operational creditor have intentionally not annexed its ledger account before this Adjudicating Authority.

### **Analysis & Findings**

6. We have heard the Learned Counsels for the Operational Creditor and the Corporate Debtor, and further perused the averments made in the petition and reply filed by the Corporate Debtor, and written submissions presented by both the Operational Creditor and the Corporate Debtor. Since the registered office of the respondent Corporate Debtor is in Delhi, this Tribunal is having territorial jurisdiction as the Adjudicating Authority in relation to prayer for initiation of Corporate Insolvency Resolution Process (CIRP) under Section 9 of

The Insolvency and Bankruptcy Code, 2016, against the Corporate Debtor. Further, the present petition is filed within the period of limitation.

7. It is to be noted that the 'Operational Creditor' had sent a demand notice dated 27.08.2022 via speed post to the 'Corporate Debtor' under Section 8 of The Insolvency and Bankruptcy Code, 2016 for payment of outstanding dues worth Rs. 7,97,36,990.60 (Rs. Seven Crore Ninety-Seven Lakhs Thirty-Six Thousand Nine Hundred Ninety & Sixty Paisa) along with an interest of 18% per annum [Amounting to Rs. 5,75,62,158.01. Further, the present petition meets the pecuniary threshold limit of Rs. 1 Crore (as required after the amendment dated 24.03.2020), as required by Section 4 of the Code.
8. In order to determine the admissibility of petition for initiating CIRP under Section 9 of the Code, the judgment of the Hon'ble Supreme Court in **Mobilox Innovations (P) Ltd. v. Kirusa Software (P) Ltd., (2018) 1 SCC 353** is to be taken into consideration. The said judgment makes it clear that in order to initiate CIRP proceedings under Section 9 of the Code, the Adjudicating Authority has to determine:
  - a) Whether there is an 'Operational Debt' exceeding Rs. 1 Lakh (1 Crore, in case the petition is filed after 24.03.2020) as defined under Section 4 of the IBC?
  - b) Whether the documentary evidence furnished with the application shows that the aforesaid debt is due and payable and has not yet been paid?
  - c) 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 if the unpaid operational debt in relation to such dispute?
9. In the first instance, to determine that whether the said amount claimed by the Operational Creditor would fall under the ambit of 'Operational Debt', it is pertinent to analyze the definition of 'Operational Debt' as mentioned under Section 5(21) of The Insolvency and Bankruptcy Code, 2016. Under said Section, the 'Operational Debt' is defined as:

*“A claim in respect of the provision of goods or services including employment or a debt in respect of the payment of dues arising under any law for the time being in force and payable to the Central Government, any State Government or any local authority”.*

While analyzing the present facts in the light of said Section 5(21), the Operational Creditor and the Corporate Debtor started trading in iron, steel etc. in the Financial Year 2010-11. The Operational Creditor deals in Iron, Steel etc. amongst other things and it was supplying various different items of the same nature (as specified in respective invoices raised) to Food and Biotech Engineers India Private Limited. It was asserted that the Corporate Debtor defaulted in making the payment to the Operational Creditor for which an action is preferred by the Operational Creditor before this Adjudicating Authority. The said Creditor claims the outstanding amount worth Rs. 13,72,99,149 (Rupees Thirteen Crores Seventy-Two Lakhs Ninety-Nine Thousand One Hundred Forty-Nine only) from the Corporate Debtor. Furthermore, on the appreciation of the transactional invoices and the bank statements of the Operational Creditor’s account, as annexed by the Operational Creditor, as placed on record before us, we are of the view that there had been a transaction between the said parties and that the Operational Creditor has supplied goods to the Corporate Debtor for which the Corporate Debtor has defaulted in making the payment. Hence, this Adjudicating Authority is inclined towards believing that the debt claimed by the petitioner comes under the purview of ‘Operational debt’ within the meaning of Section 5(21) of the Code.

**10.** It is observed that as per the requirement of Section 8(2)(a) of the Code, the Corporate Debtor is required to bring into notice of the Operational Creditor, the existence of any dispute within 10 days of the receipt of the demand notice. In the present case, the Corporate Debtor has filed reply dated 08.09.2022 to the demand notice dated 27.08.2022 sent by the Operational Creditor to the

Corporate Debtor, which was received by the Corporate Debtor on 30.08.2022. Therefore, the Corporate Debtor has fulfilled the requirement of reply to demand notice within the stipulated period of 10 days of the receipt of demand notice as laid down under said Section 8(2)(a) of the Code. However, in the said reply no specific issue of pre-existing dispute was raised.

**11.**It is also observed that it is only in the counter-affidavit filed during the instant proceeding that the Corporate Debtor attempted to show that there is a 'Pre-existing dispute' between the parties which has arisen before the receipt of demand notice sent by the Operational Creditor to the Corporate Debtor. The Corporate Debtor claims that the Operational Creditor has supplied inferior quality of goods which have caused a huge loss to the reputation and business of the Corporate Debtor. It is further claimed by the Corporate Debtor that it was also informed by their numerous buyers that the quality of the products was inferior and some needs replacement as well and various buyers of the respondent have also withheld huge payments on the pretext of the same as the products made out of the raw material supplied by the Operational Creditor could not even complete the warranty period and issued debit notes/letters in regards to same. The Corporate Debtor has also placed on record letters issued by various buyers of the respondent on account of rejected equipment. Therefore, it is pertinent to adjudicate upon this issue by this Adjudicating Authority as to whether there exists any 'Pre-Existing Dispute' as claimed by the Corporate Debtor.

**12.**In the judgment of **Mobilox Innovations Private Limited v. Kirusa Software Private Limited, (2018) 1 SCC 353**, the Hon'ble Supreme Court has held that *"an application under Section 9 of the Code is not maintainable and ought to be rejected on there being a "pre-existing dispute". The Supreme Court had held that 'so long as a dispute truly exists in fact and is not spurious, hypothetical or illusory, the Adjudicating Authority has to reject the application"*.

**13.** On going through the records, it can be seen that there were various buyers of the Corporate Debtor who issued letters to the Corporate Debtor on account of inferior quality of goods. The letters are placed on record before us in Annexure R-11. These letters are dated between 14.05.2019 to 21.04.2022. However, it is observed that, on this basis, mere debiting the amount in the ledger account of the Operational Creditor, without there being a proper communication to the Operational Creditor cannot substantiate the stand taken by the Corporate Debtor. Further, mere annexing of debit notes issued by the buyers of the Corporate Debtor, on the pretext of inferior quality of goods is not sufficient to claim that there exists a pre-existing dispute between the Applicant and the Respondent. Unless and until, the existence of pre-existing dispute is brought to the knowledge of the Operational Creditor, the claim/defense of the Corporate Debtor does not hold any ground. Further, in the present case, the Corporate Debtor has been dealing with the Operational Creditor since 2011 and did not raise any dispute as to inferior quality of goods earlier or even in its reply to Section 8 notice, except in the reply before this Adjudicating Authority vide affidavit dated 15.12.2022. Furthermore, even after the debit notes were issued by various buyers of the Corporate Debtor as to low quality of goods, the Corporate Debtor continued dealing with the Operational Creditor, without even informing the Operational Creditor as to low quality of goods. Therefore, the defense of the Corporate Debtor with respect to pre-existing dispute appears to be a moon shine defense.

**14.** It is pertinent here to refer to the decision of Hon'ble Supreme Court in **Re. Mobilox Innovations Private Ltd vs Kirusa Software Private Ltd (2018) 1 SCC 353**, wherein, the Hon'ble Supreme Court was pleased to hold, inter alia, as follows:

*"It is clear, therefore, that once the operational creditor has filed an application, which is otherwise complete, the adjudicating authority must reject the application under Section 9(5)(2)(d) if notice of dispute has been received by the operational creditor or there is a record of dispute in the information utility. It is*

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

In the present case, mere contention by the Corporate Debtor as to existence of any dispute does not create a plausible belief as to existence of any ‘Pre-existing dispute’ between the Operational Creditor and the Corporate Debtor. Therefore, it would be safe to conclude that there does not exist any ‘Pre-existing dispute’ in the present case.

**15.** In the present case, with respect to the debt amount the Corporate Debtor claims that the Corporate Debtor has made payment of Rs. 2,45,00,000 to Swastik Armaan Proteins, against the debt claimed by the Operational Creditor, on the direction of the Director of Swastik Armaan Steels Pvt. Ltd. (Operational Creditor), who is also a proprietor in Swastik Armaan Proteins. However, the Corporate Debtor has not placed on record any letter of authorisation by the Director of Operational Creditor, authorising the Corporate Debtor to make payment to Swastik Armaan Proteins. Therefore, the factum of said payment on the basis of mere averments by the Corporate Debtor without any supporting documents, does not stand substantiated. Additionally, the report dated 09.02.2023, submitted by the Court Commissioner before this Adjudicating Authority also states that “*That the*

*Corporate Debtor has failed to provide reasonable explanations for setting off the amount due towards the Operational Creditor with the amount due from its customers as well as Swastik Armaan Proteins.”* Therefore, this contention of the Corporate Debtor appears to be moonshine and does not hold ground.

**16.** Further, in relation to the debt, the Operational Creditor had received twenty-nine payment cheques from the Corporate Debtor, however, all the cheques, upon its presentation, were returned unpaid with comment of either 'Exceeds Arrangements' or 'Drawers Signature Differ'. It is observed that the issuance of cheques sets a presumption under Section 139 of the Negotiable Instrument Act, 1881, about the liability of the drawer towards a legally enforceable debt. In “Narinder Kumar Garg Vs Bhagwati Kripa Paper Mills Pvt. Ltd. & Anr, 2019 SCC OnLine NCLAT 564”, the Hon’ble NCLAT observed that:

*“It is not clear as to why the ‘corporate debtor’ issued cheques if there was no ‘debt’*

It is pertinent to note that the report dated 09.02.2023, submitted by the Court Commissioner before this Adjudicating Authority also states that a balance of Rs. 7,75,49,386.61 (Rupees Seven Crores Seventy-Five Lakhs Forty-Nine Thousand Three Hundred Eighty-Six and Sixty-One paisa) is due from the Corporate Debtor towards the Operational Creditor.

**17.** Therefore, in view of the transactional invoices accompanied with bank statements of the Operational Creditor’s bank accounts as well as the ledger account of the Corporate Debtor, we are satisfied that there exists a debt. Furthermore, the bank account statements of the Operational Creditor and the ledger account of the Corporate Debtor signifies that there exists an Operational Debt and that the Corporate Debtor has defaulted in the payment of such debt. The Corporate Debtor has taken a defense against the instant application that there is no amount payable by the Corporate Debtor to the Operational Creditor in view of (a) Payments made to Swastik Armaan Proteins (Rs. 2,45,00,000) and (b) Amount debited by the Corporate Debtor on account of inferior quality of goods (Rs. 6,06,92,270). However, we have observed from

the report of the Ld. Court Commissioner, who is a professional CA and an expert in Accounting and Financial matters, that both these contentions were not supported with reasonable explanations. As regards, the contention of payment of dishonored cheques, it is observed that the Operational Creditor had initiated proceedings under Section 138 of the Negotiable Instrument Act, which is still continuing. Therefore, there is no final verdict of the Competent Court regarding payments in respect of the dishonored cheques. Hence, we are of the view that there is a *debt due and payable* and that there has been *default* on the part of the Corporate Debtor.

**18.**In view of the above facts and circumstances, we are satisfied that the present petition filed by the Operational Creditor fulfils the criteria laid down under the provisions of the Insolvency and Bankruptcy, Code. The Petition establishes that the Corporate Debtor is in default of a debt due and payable and that the default is more than the minimum amount stipulated under section 4 (1) of the Code, stipulated at the relevant point of time. In the light of the above facts and circumstances, it is, hereby ordered as follows: -

- a) The application bearing **CP (IB) No. 741/ND/2022** filed by, **Mr. Vikas Aggarwal, Director of M/s Swastik Armaan Steels Private Limited**, the Operational Creditor, under Section 9 of the Code read with rule 6 of the Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016 for initiating CIRP against **M/s Food and Biotech Engineers India Private Limited**, the Corporate Debtor, is **admitted**.
- b) The Applicant has proposed the name of Ajay Kumar Atolia, registration number IBBI/IPA-001/IP-P-01988/2020-2021/13127, as the Interim Resolution Professional of the Corporate Debtor in Part-III of the application. Therefore, Mr. Ajay Kumar Atolia, Registration Number IBBI/IPA-001/IP-P-01988/2020-2021/13127 Email: [ajay@srgoyal.com](mailto:ajay@srgoyal.com) is hereby appointed as Interim Resolution Professional (IRP) of the Corporate Debtor to carry out the functions as per the Code. The proposed Interim

Resolution Professional is directed to give his written consent in Form 2 as required under rule 9(1) of the Insolvency and Bankruptcy [Application to Adjudicating Authority] Rules, 2016 along with a copy of registration certificate as well as a valid AFA within 5 days of receipt of this order.

- c) We direct the applicant to deposit a sum of Rs. 2 lacs with the Interim Resolution Professional, namely Mr. Ajay Kumar Atolia, to meet out the expense to perform the functions assigned to him in accordance with regulation 6 of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Person) Regulations, 2016. The needful shall be done within one week from the date of receipt of this order by the Operational Creditor. The amount, however, be subject to adjustment by the Committee of Creditors, as accounted for by Interim Resolution Professional, and shall be paid back to the Operational Creditor.
- d) We also declare moratorium in terms of Section 14 of the Code. The necessary consequences of imposing the moratorium flows from the provisions of Section 14 (1) (a), (b), (c) & (d) of the Code. Thus, the following prohibitions are imposed:

*“(a)The institution of suits or continuation of pending suits or proceedings against the corporate debtor including execution of any judgment, decree or order in any court of law, tribunal, arbitration panel or other authority;*

*(b)Transferring, encumbering, alienating or disposing of by the corporate debtor any of its assets or any legal right or beneficial interest therein;*

*(c)Any action to foreclose, recover or enforce any security interest created by the corporate debtor in respect of its property including any action under the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002;*

*(d)The recovery of any property by an owner or lessor, where such property is occupied by or in the possession of the corporate debtor.”*

*(e)The IB Code 2016 also prohibits Suspension or termination of any license, permit, registration, quota, concession, clearances or a similar grant or right given by the Central Government, State Government, local authority, sectoral regulator or any other authority constituted under any other law for the time being in force, on the grounds of insolvency, subject to the condition that there is no default in payment of current dues arising for the use or continuation of the license, permit, registration, quota, concessions, clearances or a similar grant or right during the moratorium period.”*

- e) It is made clear that the provisions of moratorium shall not apply to transactions which might be notified by the Central Government or the supply of the essential goods or services to the Corporate Debtor as may be specified, are not to be terminated or suspended or interrupted during the moratorium period. In addition, as per the Insolvency and Bankruptcy Code (Amendment) Act, 2018 which has come into force w.e.f. 06.06.2018, the provisions of moratorium shall not apply to the surety in a contract of guarantee to the corporate debtor in terms of Section 14 (3) (b) of the Code.
- f) The Interim Resolution Professional shall perform all his functions contemplated, inter-alia, by Sections 15, 17, 18, 19, 20 & 21 of the Code and transact proceedings with utmost dedication, honesty and strictly in accordance with the provisions of the Code, Rules and Regulations. It is further made clear that all the personnel connected with the Corporate Debtor, its promoters or any other person associated with the Management of the Corporate Debtor are under legal obligation under Section 19 of the Code to extend every assistance and cooperation to the Interim Resolution Professional as may be required by him in managing the day-to-day affairs of the 'Corporate Debtor'.
- g) In case there is any violation committed by the ex-management or any tainted/illegal transaction by ex-directors or anyone else, the Interim Resolution Professional would be at liberty to make appropriate application to this Tribunal with a prayer for passing an appropriate order. The Interim Resolution Professional shall be under duty to protect and preserve the value of the property of the 'Corporate Debtor' as a part of its obligation imposed by Section 20 of the Code and perform all his functions strictly in accordance with the provisions of the Code, Rules and Regulations.
- h) A copy of the order shall be communicated to the applicant, Corporate Debtor and IRP above named, by the Registry. In addition, a copy of the

order shall also be forwarded to IBBI for its records. Applicant is also directed to provide a copy of the complete paper book to the IRP. A copy of this order is also sent to the ROC for updating the Master Data. ROC shall send compliance report to the Registrar, NCLT.

Let copy of the order be served to the parties.

**Sd/-**  
**(Dr. Binod Kumar Sinha)**  
**Member (Technical)**

**Sd/-**  
**(P.S.N. Prasad)**  
**Member (Judicial)**