

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

Company Appeal (AT) (Insolvency) No. 1908 of 2024

**[Arising out of the Impugned Order dated 12.07.2024 passed by the
Adjudicating Authority, National Company Law Tribunal, Ahmedabad
Bench in C.P. (IB) No. 108/AHM-II/2023]**

In the matter of:

LORDS INN HOTELS AND DEVELOPERS PRIVATE LIMITED

202, 2nd Floor, Morya Blue Moon,
Opp Citi Mall, Off. New Link Road,
Andheri West, Mumbai- 400 053

....

Appellant

Versus

AARYARAJ CLUB AND RESORTS LLP,

Lunetts Industries, 2- Radha Krusnagar,
Lathia Motors, Gondal Road,
Rajkot, Gujrat- 360004

.... Respondent

Present:

For Appellant : Mr. Sunil Fernandes, Sr. Advocate.

For Respondent : Mr. Abhishek Anand, Mr. Arpit Dwivedi and Mr.
Raghav, Advocates.

J U D G M E N T
(Hybrid Mode)

Per: Barun Mitra, Member (Technical)

The present appeal filed under Section 61 of Insolvency and Bankruptcy Code 2016 ('**IBC**' in short) by the Appellant arises out of the Order dated 12.07.2024 (hereinafter referred to as '**Impugned Order**') passed by the Adjudicating Authority (National Company Law Tribunal, Ahmedabad Bench-II) in C.P. (IB) No. 108/AHM/2023. By the impugned order, the

Adjudicating Authority has rejected the Section 9 application filed by the Appellant-Operational Creditor. Aggrieved by the impugned order, the present appeal has been preferred by the Appellant.

2. The brief facts of the case which are relevant to be noticed for consideration of the present appeal are as under:

- On 04.06.2019, a Memorandum of Understanding ("**MoU**" in short) was signed between the Corporate Debtor/Respondent-Aarya Raj Club and Resorts LLP as the "First Part" and Lords Sai Maa Hotels Pvt. Ltd. ("**LSMHPL**" in short) as the "Second Part" wherein the Second part was represented by its authorised signatory Mr. P.R. Bansal. In terms of this MoU, the Second Part after an investment of Rs 10 Cr. was to be inducted as a partner of the First Part and that professional management of Aarya Club/Resort would be exclusively assigned to the Appellant-Lords Inn Hotels and Developers Pvt. Ltd. ("**LIHDPL**" in short) through a different agreement.
- A Sales and Marketing Agreement ("**SMA**" in short) was also signed on 10.06.2019 between LSMHPL; Aarya Raj Club and Resorts LLP and a third party, namely, IBFW Hospitality to conduct and promote the sales and marketing of the club/resort. In terms of this tripartite agreement, LSMHPL was required to bear the cost and expense towards marketing and promotional activities carried out by IBFW Hospitality.
- On 17.07.2019, the Corporate Debtor-Respondent, Aarya Raj Club and Resorts LLP which was the owner of the club/resort entered into

a Franchisee and Management Agreement (“**FMA**” in short) with the LIHDPL-Operational Creditor for the purpose of operation of the said club/resort. In terms of the FMA, the Respondent was required to pay Service Fee (which has been interchangeably termed as Management Fees) of Rs 3 lakhs to the Appellant on a monthly basis.

- On 26.08.2021, one P.R. Bansal and his group as First Party had executed a MoU with the Respondent-Corporate Debtor whereby the Respondent had agreed to pay a sum of Rs 41.30 lakhs towards balance management fee to LIHDPL upto August 2021.
- As their payments were allegedly not received inspite of several reminders, the Appellant-LIHDPL issued a Section 8 Demand Notice on the Corporate Debtor on 24.02.2023 for a sum of Rs 1.97 Cr. comprising of Rs 1.57 Cr. towards management fee and Rs 39.33 lakhs towards F&B revenue both inclusive of interest @ 18%.
- In March 2023, the Appellant-LIHDPL filed the Section 9 petition before the Adjudicating Authority for initiation of CIRP of the Corporate Debtor for outstanding debt of Rs 1.97 Cr.
- The Corporate Debtor sent a reply on 01.04.2023 to the Section 8 Demand Notice which date was clearly after the filing of the Section 9 application by the Appellant. The Corporate Debtor thereafter also sent a detailed legal reply on 08.04.2023 which was also clearly post the filing of the Section 9 application. The Corporate Debtor had also invoked arbitration in their legal reply.

- The Adjudicating Authority on 12.07.2024 dismissed the Section 9 application both on the grounds of validity of the dues claimed by the Appellant and pre-existing disputes.
- Aggrieved by the impugned order, the present appeal has been preferred by the Appellant.

3. Making his submissions, Shri Sunil Fernandes, Ld. Sr. Counsel for the Appellant submitted that in the present case the Operational Creditor having delivered and performed the requisite services in terms of the FMA and SMA, it was entitled to payment of monthly service fee, base fee and revenue fee raised by IBFW Hospitality. This claim fell under the purview of Section 5(21) of the IBC and qualified to be treated as an operational debt. When the Corporate Debtor continued to avail services from the Operational Creditor without terminating the agreements, they were under an obligation to pay to the Operational Creditor for the services consumed and in support of their contention, reliance was placed on the judgment of this Tribunal in ***Deepak Modi Vs Shalfeyo Industries Pvt. Ltd. in CA(AT)(Ins) No. 1019 of 2022.***

It was also asserted that the Corporate Debtor had availed and consumed the services of the Operational Creditor without raising any contemporaneous communication disputing the quality of services. Since the Corporate Debtor had failed to substantiate that it had communicated real-time disputes to the Appellant before the Section 8 Demand Notice shows that the defence raised by the Corporate Debtor was an afterthought and hence a moonshine defence. Even the invocation of arbitration proceedings

was done after the filing of the Section 9 application and hence cannot be treated as pre-existing dispute. Reliance was placed on the judgment of this Tribunal in ***Next Education India Pvt. Ltd. Vs K12 Techno Services Pvt. Ltd. in CA(AT)(Ins.) No. 98 of 2019*** to contend that disputes raised after demand notice are not pre-existing disputes. The execution of the MoU on 26.08.2021 by itself was an admission of debt and acknowledgment of liability by the Respondent. Cumulatively seen the outstanding debt exceeded the statutory threshold of Rs 1 Cr. under Section 4 of the IBC and therefore there was no doubt that the Section 9 application was maintainable from the threshold point of view. The responsibility of the Corporate Debtor to pay management fees was sacrosanct in terms of the FMA with no requirement for issue of invoices. The assertion made by the Respondent of non-payment of GST/Service Tax and issue of proforma invoices cannot become a ground to negate the underlying debt. The Adjudicating Authority also travelled beyond its limited jurisdiction under Section 9 of the IBC by investigating into the factum of contractual disputes which is clearly impermissible.

4. Refuting the contentions raised by the Appellant, Shri Abhishek Anand, Ld. Counsel for the Respondent submitted that the Section 9 application filed by the Appellant was not maintainable since it failed to meet the minimum threshold requirement of Rs 1 Cr. It was pointed out that the claim under the FMA for management fees was only Rs 60.18 lakhs. Since there was no privity of contract between the Appellant and the Corporate Debtor with respect to the MoU dated 26.08.2021, claim of Rs 41.30 lakhs

made by the Appellant under this MoU was not admissible. Even the claim of Marketing Fees arising out of the SMA was not maintainable since the Appellant was not a signatory to the document. The claim of interest made on the principal amount arising out of the MoU, FMA and SMA was also non-maintainable since the clauses contained in the above agreements did not provide for any interest clause. Thus, the claim of the Corporate Debtor was merely confined to Rs 60.18 lakhs arising out of the FMA, which amount did not meet the prescribed threshold of Rs 1 Cr. It was also contended that the proforma invoices filed by the Appellant with the Section 9 application were unsigned documents which had never been communicated to the Respondent-Corporate Debtor. The proforma invoices thus had no legal sanctity and could not be used for claiming debt. Further, the debt claimed by the Operational Creditor was disputed. Disputes had been raised on the poor quality of services, financial mis-management, unauthorized cash transactions, unauthorized discounts, non-transfer of online booking revenues etc by the Appellant which all led to operational losses. The Corporate Debtor had sent several communications to the Appellant including legal notices against the claims and that the arbitration clause contained in the FMA was invoked by issue of notice under Section 21 of the Arbitration and Conciliation Act on 08.04.2023 which all clearly affirm that there was pre-existing dispute between the parties. The fact that the pre-existing disputes was well documented is substantiated by the fact that the arbitration petition had been allowed by the Gujarat High Court and an arbitrator had been appointed. It was contended that once the plausibility of

dispute is noticed by the Adjudicating Authority, it was sufficient basis to admit the Section 9 application without entering into final adjudication with regard to existence of dispute by placing reliance was placed on the judgment of the Hon'ble Supreme Court in ***Mobilox Innovations Pvt. Ltd. Vs Kirusa Software Pvt. Ltd. (2018) 1 SCC 353.***

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

6. Coming to the reasons basis which the Adjudicating Authority was persuaded to dismiss the Section 9 application, one of the principal grounds was that the dues claimed by the Operational Creditor cannot be treated as operational debt because the invoices were invalid as these were proforma invoices which did not reflect any GST payment.

7. To dwell upon the issue of GST payment and submission of proof of payment thereof, we may first take a look at Regulation 2-B of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016. This Regulation was inserted by an amendment notification on 14.06.2022 by the IBBI making it mandatory for the Operational Creditor in possession of GST number to furnish record or evidence of transaction by way of extracts of Form GSTR-1, which Regulation is to the effect:

Regulation 2B: Record or evidence of transaction, debt and default by operational creditor.

2B. *The operational creditor shall, alongwith application under section 9, furnish copies of relevant extracts of Form GSTR-1 and Form GSTR-3B filed under the provisions of the relevant laws relating to Goods and Services Tax and the copy of e-way bill wherever applicable:*

Provided that provisions of this regulation shall not apply to those operational creditors who do not require registration and to those goods and services which are not covered under any law relating to Goods and Services Tax.

8. Having seen the relevant Regulation, we now proceed to look at the proforma invoices which have been placed on record by the Appellant as placed at pages 117 to 134 of the Appeal Paper Book (“**APB**” in short). We find that all the invoices reflect a GST number viz 24ABCFA9353P1Z1. Seen in the backdrop of the above-quoted Regulation 2-B, when the proforma invoices clearly featured a distinct GST number, it was incumbent upon the Appellant in terms of the said Regulations to submit the GST payment details as recorded in the corresponding GSTR forms. However, clearly there was no accompanying proof of GST payment.

9. We also find that on noticing that there is no evidence of GST payment, the Adjudicating Authority had given adequate opportunity to the Appellant to furnish proof of GST payment. The order of the Adjudicating Authority dated 22.04.2024 in this regard has been placed by the Respondent in their Reply to the Appeal at page 61 which is reproduced herein:

ORDER

Ld. Counsel for the applicant is directed to file written submission, not more than three pages, along with GST proof.

Ld. Counsel for the respondent is also directed to file written submission not more than three pages.

List the matter on 13.05.2024.

The above order leaves no doubt that the Adjudicating Authority gave sufficient elbow room to the Appellant to submit proof of GST payment.

10. When Section 9 application was filed on the basis of proforma invoices which contained a GST number, it was incumbent on the part of the Appellant to make GST payment. When the Adjudicating Authority gave reasonable opportunity to the Appellant to submit GST details and yet the latter failed to furnish the same, it gave sufficient basis for the Adjudicating Authority to doubt the validity of the claim. Since the Appellant failed to provide the GST details inspite of being given a chance by the Adjudicating Authority to do so, the Appellant cannot justifiably assert any infirmity in the impugned order on this count.

11. We next come to the impugned order wherein it has been held that as the debt was based on claims made against proforma invoices, these invoices were not legally valid invoices.

12. Assailing the impugned order, contention was pressed by the Appellant that the Adjudicating Authority was swayed by wrong reasons in dismissing their Section 9 application. Submission was made that there was no need for them to raise invoices in terms of the FMA. When contractual terms executed between the parties did not stipulate requirement to raise any such invoices, this could not become a ground for the Respondent not to clear their dues and liabilities owed to the Appellant. Further refuting the contentions of the Respondent that the claims were not payable to the Appellant as the invoices were raised by LSMHPL and not by the Appellant, it is contended by the Appellant that these invoices have to be construed to have been issued by the Appellant since Lords Sai Maa was a sister concern of the Appellant. Moreover, this arrangement being followed with regard to

the manner of issue of invoices had been continuing for a long time. The Respondent was also pretty much aware of this practice adopted by the Appellant and Lords Sai Maa in the issue of invoices and the Respondent had been accepting such invoices issued by Lords Sai Maa in the past without raising any dispute. In this backdrop, the Respondent-Corporate Debtor could not have resiled on their obligation to make payment against such invoices even if they were raised by Lords Sai Maa as invoices raised by a sister concern are in law to be treated as invoices of the Appellant for the purpose of Section 9 application.

13. Per contra, it is the case of the Respondent that in the present case the Operational Creditor had failed to demonstrate that there was a well-defined operational debt in the absence of valid invoices. It was canvassed that the invoices placed on record made it unambiguously clear that the invoices are proforma and unsigned invoices. It was strenuously contended that mere raising of proforma invoices does not substantiate a debt as such unsigned, proforma invoices have no legal sanctity. The Appellant had also failed to submit proof of delivery of the proforma invoice on them. Moreover, the invoices had been raised not by the Appellant but by a sister concern of the Appellant and therefore the Appellant cannot make these invoices the basis of their claims. It was also contended by the Respondent that the proforma invoices purportedly claimed to have been raised by the Appellant were neither delivered to them.

14. Having noted the rival contentions of both parties, we now feel it appropriate to look at the claims raised by the Appellant in the backdrop of the agreements executed between the two parties.

15. Firstly, we look at the FMA as placed at page 59 of APB. We find that one of the signatories is the Appellant-M/s Lords Inn Hotels and Developers Ltd. as the “operator” while the Corporate Debtor-Aarya Raj Club and Resorts LLP is the second party as the “owner”. We find that Clause 9.2(b) of FMA provided for monthly service fee of Rs 3 lakh payable by the owner for a period of two years and payment of service fees thereafter as percentage of gross revenue by the owner to the operator. The Appellant has claimed only Rs 60.18 lakhs as principal amount outstanding in respect of management fees and we find that the Respondent has not disputed this principal amount. However, what has been disputed is the interest claimed by the Appellant on the outstanding management fees. Relying on Clause 10.3 of the FMA which provided that interest was chargeable only on amounts other than service fees under the FMA, the addition of interest amount of Rs 56.44 lakhs calculated @ 18% by the Operational Creditor on the management fees has been contended by the Appellant to be inadmissible and arbitrary.

16. We are inclined to agree with the Respondent that there was no provision for interest in terms of the FMA and hence interest could not have been claimed by the Appellant. When the FMA dues minus the interest thereupon is factored, the outstanding amount stands is clearly below the threshold limits. Thus, the admitted claim of the Corporate Debtor was

confined to Rs 60.18 lakhs arising out of the FMA only which amount did not meet the prescribed threshold of Rs 1 Cr.

17. We now come to the claim of Rs 41.30 lakhs raised by the Appellant which has been made under the MoU dated 26.08.2021. This amount has been strenuously disputed by the Respondent. It is the case of the Respondent that the amount of Rs 41.30 lakhs arising out of the MoU cannot be claimed by the Appellant since they were not a signatory of the said MoU. This MoU which appears at page 104 of APB was not executed by the Operational Creditor but was entered into by a separate legal entity and this amount had been cleverly added by the Appellant to their claim qua the Respondent only with the purpose of crossing the threshold limit.

18. At this stage it may be useful to notice the parties to the MoU of 26.08.2021 and the terms of the said agreement as is extracted below:

“This Agreement is made on this 26th Aug 2021 between Mr. Pushpendra R Bansal and group/groups represented by Mr. Pushpendra R Bansal who is a Hindu adult aged 61 years and at present residing at 1301, Manish Tower CHS Ltd., Manish Nagar, J. P. Road, Four Bungalows, Andheri (West), Mumbai —400 053, Maharashtra (Now commonly known as First (1st) Party).

And

Aaryaraj Club and Resorts LLP represented by Mr. Amish Thakrar and Mr. Ishwar Gehi as partner individually both hindu having address as Aarya Lords Club & Resort Kalwad Road, Rajkot (Now commonly known as Second (2nd) Party).

It is hereby agreed as under:

- 1. That if Second Party will pay balance fees old dues within six month of signing this agreement today 26th August 2021 to LIHDPL to tune of Approximate Rs 41,30,000/-*

2. The Second Party will fulfill the management agreement signed between both parties and will keep the lock-in period for 5 years starting from August' 2021."

19. When we come to the signatories of the MoU dated 26.08.2021 which appears at page 104 of APB, we find that it is signed between Mr. P.R. Bansal as first party and Aarya Raj Club and Resorts LLP as second party. The Appellant-LIHDPL undisputedly does not figure as a signatory. This claim of the Appellant basis this MoU, according to the Respondent, was not admissible since this arose out of an MoU which was not executed by the Operational Creditor. It is the case of the Respondent that as there was no privity of contract between the Appellant and the Corporate Debtor with respect to this MoU, no claim could have been made by the Operational Creditor qua the Corporate Debtor arising out of the MoU. Furthermore, it was contended that the Respondent was not even aware of this MoU of 26.08.2021 and the Corporate Debtor in their reply to the Section 8 Demand Notice had in fact sought a copy of the MoU dated 26.08.2021. We find force in the contention of the Respondent that the Operational Creditor not being a signatory to the MoU could not have made any claim under the said MoU and hence the amount claimed in the Section 9 application under the MoU is devoid of merit. Moreover, in respect of the MoU dues, the computation of interest was also not maintainable as the MoU did not provide for interest.

20. It is the case of the Respondent that similarly the claim of Marketing Fees of Rs. 39,33,590/- including interest component arising out of the SMA was not maintainable since the Appellant was not a signatory to the document nor privy to the contract. It was added that under the SMA, the

revenue generated was to go directly to LSMHPL and not to the Appellant. Payment to IBFW was to be made by LSMHPL and not by the Corporate Debtor and hence no claims could be raised by the Appellant on this count. Moreover, there was no provision of interest and in the absence of any such stipulation, the claim of interest was misconceived.

21. At this stage it may be useful to have a look at this tripartite agreement as is seen from the document placed at page 97 of APB which is extracted below:

SALES AND MARKETING AGREEMENT

This Sales & Marketing Agreement is entered on this 10th Day of June 2019.

BETWEEN

*Lords Sai Maa Hotels Private Limited with CIN [] and registered address as [], represented by its Authorised Signatory Mr. Pushperdra R Bansal (hereinafter referred to as “**Lords**”, which expression shall unless repugnant to the context or meaning thereof, be deemed to include its successors and assigns) of the First Part.*

AND

*Aarya Raj Club & Resorts LLP with registration number [] and registered address as [], represented by its Partners Mr Ishwar Gehi and Mr Amish Thakrar (hereinafter referred to as “**Aarya Club**”, which expression shall unless repugnant to the context or meaning thereof, be deemed to include its successors and assigns) of the Second Part;*

AND

*IBFW Retail Private Limited with CIN {U7499MH2018PTC304640} and registered address as 3rd floor, Jai Ambe, New Juhu Versova Link Road, Andheri West, Mumbai 400053, represented by its Authorised Signatory Mr Vijay Kumar Singh ((hereinafter referred to as “**IBFW**”, which expression shall unless repugnant to the context or meaning thereof, be deemed to include its successors and assigns) of the Third Part.*

22. When we look at the signatories of the above SMA dated 10.06.2019, we find that the Appellant was not a signatory therein. The SMA was a

tripartite agreement executed between LSMHPL, Corporate Debtor and IBFW with the Appellant clearly not being a party thereto. We, therefore, find substance in the contention of the Respondent that there was no privity of contract between the Appellant and the Respondent in respect of the SMA and hence the claim qua the SMA is misconceived as there was no contractual obligation on the Corporate Debtor.

23. This now brings us to the ground of pre-existing disputes which has been raised by the Respondent. It has been asserted that the Corporate Debtor can only be put into insolvency in clear cases where no real dispute between the parties in respect of the operational debt. Since the debt in the Section 9 application was disputed by the Respondent because of shortcomings in the delivery of services by the Appellant, the Adjudicating Authority was obligated to reject the Section 9 application. It was asserted that the Adjudicating Authority had rightly rejected the Section 9 application after noticing pre-existing disputes which find mention at para 9(iii) (iv) and (vii) in the impugned order.

24. When we have a look at the impugned order, we find that at para 9(vii) therein, the Adjudicating Authority has noticed that there were serious disputes relating to deficiencies in the management of the property and business operations of the Respondent by the Appellant. At sub-paras(iii) and (iv), there is mention of the Respondent having sent a detailed legal notice levelling various disputes and making a claim of Rs 8 Cr as well as invocation of the arbitration clause.

25. Per contra, it is the case of the Appellant that the Corporate Debtor had been continuously availing the services from the Operational Creditor without raising any disputes contemporaneously. When there were no real-time disputes raised before the Section 8 Demand Notice it shows that the defence raised by the Corporate Debtor was feeble defence raised as an after-thought. If the disputes were genuine, it remains unexplained as to why the FMA was not terminated. Thus, at the point of time when the Appellant had raised a formal demand of outstanding debt under Section 9 of IBC, there was no record of dispute. Hence, the concerns raised by the Corporate Debtor on the quality of services rendered by the Operational Creditor and other deficiencies/ shortcomings/irregularities after the filing of the Section 9 application could not have been treated as pre-existing disputes as has been erroneously done by the Adjudicating Authority. It was also vehemently contended that not only were the agreements between the Appellant and Respondent not terminated but even the invocation of arbitration proceedings was done after the filing of the Section 9 application and hence cannot be treated as pre-existing dispute.

26. Coming to our findings we agree with the Appellant that there is no embargo on the filing of a Section 9 application even if the contractual agreements provided for arbitration clause. Moreover, the arbitration proceedings were clearly initiated after the filing of Section 9 application and does not qualify to be treated as a pre-existing dispute. However, we cannot ignore the fact that the Respondent had submitted several communications including legal notices highlighting non-transfer from online revenue-

bookings, deployment of untrained staff leading to operational losses, unauthorised cash transactions, financial mismanagement, reputational harm, loss suffered and counter-claims thereof made to the tune of Rs. 8 Cr.

27. That there was dispute between the two parties well before the issue of the Section 8 demand notice is also borne out from the Reply Affidavit of the Corporate Debtor to the Section 9 application as placed at page 565 of APB wherein there is a clear mention of a meeting held by them with the Appellant on 27.01.2023 regarding shortcomings and deficiencies in service. When asked by this Bench pointedly to the Learned Counsel of the Appellant on whether any such meeting was actually held on 27.01.2023, the same was not denied with the caveat that no minutes of the said meeting are available. It may be constructive to notice the relevant contents of the said reply of the Corporate Debtor which is extracted below:

“19. The Corporate Debtor was shocked and surprised to receive the said email dated 04-04-2023 from the advocate of the Operational Creditor, since the Corporate Debtor had raised various grievances regarding the poor services being provided by the Operational Creditor and accordingly, the Corporate Debtor and Operational Creditor had engaged in various communications and discussions wherein the Operational Creditor had acknowledged poor services and breach of various terms of the Agreement in the meeting dated 27-01-2023 and sought 60 days time to rectify the issues.

20. However, the Operational Creditor grossly failed to take any corrective actions and continued to provide poor services, bad quality food and illegal activities of the staff employed by the Operational Creditor continued. In view thereof, the Corporate Debtor was constrained to serve upon the Operational Creditor the "Legal Notice for adjudication of dispute through Arbitration and Detailed Reply to your Notice dated 24-02-2023" ("Arbitration Notice cum Reply to Demand Notice") vide Notice dated 08-04-2023 providing details of instances and failures of the Operational Creditor, terminating the

Agreement and demanding for various losses caused to the Corporate Debtor due to actions and inactions of the Operational Creditor. The said Notice was accompanied by various documents showing illegal retention of the monies due to the Corporate Debtor, poor services being provided by the Respondent-Operational Creditor against the terms of Agreement, and various other breaches by the Operational Creditor. A copy of the said Notice along with RPAD receipt is annexed herewith and marked Annexure-H hereto.

.....

25. That due to such inaction of the Operational Creditor, a meeting was called upon on 27-01-2023 for detailed discussion on the issues in running and management of the Club and Resort facility which was attended by Mr. Pushpendra Bansal and Mr. Sudhir Jena representative of Operational Creditor and Mr. Amish Thakrar and Mr. Ishwar Gehi representatives of the Corporate Debtor. That during the said meeting the Operational Creditor sought for 60 days' time to cure all the defects, in accordance with the Management Agreement to improve the services, however, the Operational Creditor has failed in fulfilling the promises and assurances given from time to time.

(Emphasis supplied)

28. It is clear from the above that in the meeting held on 27.01.2023 the Corporate Debtor had taken up with the Operational Creditor to improve its services and that the latter had failed to take remedial action which had culminated in the issue of the legal notice which notice was issued prior to the Section 9 application. This meeting of 27.01.2023 finds specific mention in the legal notice sent by the Respondent at para 7 therein which figures at page 664 of the APB. The law on this aspect is well settled that in Section 9 proceedings, the Adjudicating Authority is not required to enter final adjudication with regard to existence of dispute between the parties regarding the operational debt but what has to be looked into is whether the defence has raised a plausible dispute which needs further adjudication by a competent court.

29. Section 9 cannot be triggered for any debt which amount falls below threshold limits or for debts which are steeped in disputes. The stance taken by the Appellant that the Corporate Debtor was trying to manufacture disputes fails to pass muster for reasons discussed above. The defence raised by the Corporate Debtor cannot be held to be moonshine, spurious, hypothetical or illusory and for such disputed operational debt, Disputes pertaining to contractual issues are not to be resolved in Section 9 proceedings and hence in the present factual matrix, the Section 9 proceeding cannot be initiated at the instance of the Operational Creditor. In the given facts and circumstances, this is not a case where the Adjudicating Authority could have admitted the Section 9 application.

30. For the forgoing reasons, we are of the considered view that the Adjudicating Authority has not committed any error in dismissing the Section 9 application filed by the Appellant. We do not find any merit in the Appeal. The Appeal is dismissed. No order as to costs.

**[Justice Ashok Bhushan]
Chairperson**

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

Place: New Delhi

Date: 07.01.2026

Abdul