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**NATIONAL COMPANY LAW TRIBUNAL**  
**NEW DELHI BENCH-V**

(IB)-295(ND) 2019

**In the matter of**

**PVM INNVENSYS PRIVATE LIMITED**  
**House No. 8-2-293/82/G/A/68,**  
**Adjacent to BN Mullik Enclave,**  
**Jubilee Hills, Road No. 34,**  
**Hyderabad 500 033,**  
**Telangana**

.....Operational Creditor

**V/s**

**C-TEL INFOSYSTEMS PRIVATE LIMITED**  
**DSM No. 361-362, 3<sup>rd</sup> Floor,**  
**DLF Towers, Shivaji Marg,**  
**New Delhi - 110015**

.....Corporate Debtor

**SECTION: 9 of IBC, 2016**

**Order delivered on: 24.01.2020**

**CORAM:**

**MR. ABNI RANJAN KUMAR SINHA, MEMBER (JUDICIAL)**

**PRESENT-** Mr. Aishwarya Mohan Gahrana and Mr. Nagaraj Kumar for the  
Petitioner

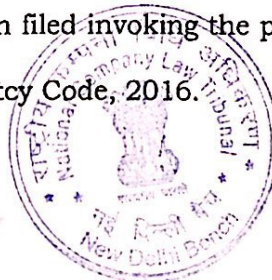
Mr. Pragyan Sharma and Mr. Sumit Wadhwa for the Respondent

**ORDER**

**Per Mr. Abni Ranjan Kumar Sinha, Member (Judicial)**

1. The present petition has been filed invoking the provision of Section 9  
of the Insolvency & Bankruptcy Code, 2016.

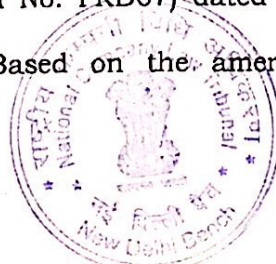
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2. The Operational Creditor supplied GPS (Global Positioning System) equipment and provided managed and professional services to the Corporate Debtor with respect to HPFS projects pursuant to Master Service Agreements 02.05.2014 and Managed Services Agreement 01.09.2014 respectively. The Corporate Debtor on 13.03.2015 paid out of running account balance an amount of Rs. 43,49,612/- and Rs. 5,41,120/- to the Operational Creditor and deducted TDS of Rs. 4,34,961/-, Rs. 54,112/-, Rs. 49,894/- and Rs. 53,561/- deposited in the Central Government Account on 13.04.2015, 30.04.2015 and 24.07.2015 respectively. The Corporate Debtor on 16.06.2015 paid out of running account balance an amount of Rs. 10,14,541/- paid to Operational Creditor and deducted TDS of Rs. 1,01,455/- and deposited in the Central Government Account on 24.07.2015. The Corporate Debtor vide email dated 15.10.2015 confirmed that an amount of Rs. 50,32,028/- payable to the Operational Creditor for the supply and installation of 804 vehicle trackers and payment of commission and managed and professional services. The Corporate Debtor vide email dated 11.12.2015 issued Purchase Order for an amount of Rs. 3,67,200/- to the Operational Creditor for 30 Nos. Hippo GPS vehicle trackers without SIM, including installation, configuration and setup of an amount of Rs. 12,000/- each. In response to the Operational Creditor acceptance of the said purchase order, the Corporate Debtor forwarded amended Purchase Order (Purchase Requisition No. PRD07) dated 12.12.2015 through email dated 12.12.2015. Based on the amended Purchase Order the

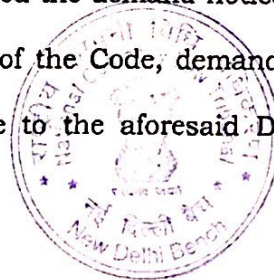
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Operational Creditor supplied 30 Nos. GPS vehicle trackers to the Corporate Debtor vide Delivery Challan dated 12.12.2015. As of 12.12.2015 an amount of Rs. 53,99,228/- is outstanding payable by the Corporate Debtor to the Operational Creditor against above referred supplies, services and facilitation after netting off on-account payments received.

3. As per the averments of the Operational Creditor, the Corporate Debtor's emails dated 29.09.2015 containing Form 16A confirming the TDS deduction for the Assessment Year 2015-16 of an amount of Rs. 4,89,073 and copy of Form 26AS of the operational Creditor for the Assessment Year 2016-17 confirming the TDS deduction of an amount of Rs. 1,01,455; confirms and establishes that the Corporate Debtor owes the outstanding payment to the Operational Creditor towards its legitimate dues for supply of goods and services made by the Applicant to the Corporate Debtor from time to time.
4. The Operational Creditor further submitted that in the aforesaid facts and circumstances and from the admission on the part of Corporate Debtor itself, it is evident that it is liable to pay to the Operational Creditor an amount aggregating to Rs. 53,99,228/- along with interest at the rate of 18% per annum till the date of actual payment.
5. The Operational Creditor issued the demand notice dated 20.11.2018 as required under Section 8 of the Code, demanding a total sum of Rs. 53,99,228/-. In response to the aforesaid Demand notice, the

  
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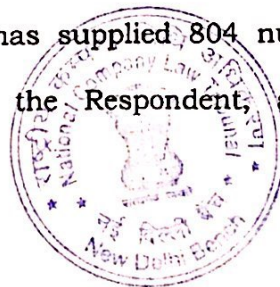
Corporate Debtor sent a Notice of Dispute vide email dated 03.12.2018 to the Operational Creditor stating that there is no existence of debt and that Operational Creditor has not supplied 804 GPS vehicle trackers equipment.

6. In view of the Corporate Debtor's failure to reduce or liquidate its liability, the present petition has been filed in the required format praying for initiation of the Corporate Insolvency Resolution Process of the Corporate Debtor. Affidavit in compliance under Section 9(3)(b) and 9(3)(c) of Code are on record to corroborate his case.

7. Pursuant to the Court notice issued to the Corporate Debtor, reply was filed and it was submitted by Corporate Debtor that:

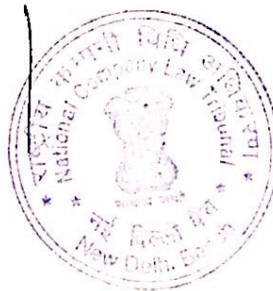
a. The Respondent disputes and denies in totality all allegations, averments, and other contents of the Petition under reply including the Synopsis, List of dates and the annexures since the averments made in the present case are a toxic cocktail of highly colored and distorted version of the actual state of affairs with a liberal dose of outright lies.

b. At the outset, the Respondent most respectfully submits that the present application is not maintainable either in law or on facts and hence the same deserves to be dismissed at the threshold itself in view of the fact that though the Petitioner has alleged that it has supplied 804 numbers of vehicles tracking system to the Respondent, amounting to Rs.



50,32,028/-, which is payable, however, the Petitioner has failed to submit/enclose any document with regard to proof of supply of such number of tracking systems vis-à-vis invoices/bills issued by the Operational Creditor for the disputed period, nor has it submitted any delivery challans, purchase orders, copies of the contract etc.

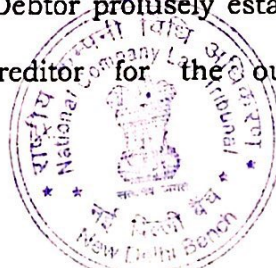
- c. The present Petition filed by the Petitioner is based on wrong and baseless allegations despite knowingly the fact no 804 GSM vehicle tracking systems were ever supplied by the Operational Creditor. It is relevant to mention here that the Respondent vide its reply dated 03.12.2018 to the demand notice issued by the Operational Creditor had categorically denied the supply of 804 GPS as alleged by the Petitioner. However, The Respondent being a bonafide and law abiding corporate entity stated that only 30 GPS system were supplied and nothing beyond these numbers, which were also never installed by the Operational Creditor as was required of them as per the agreed terms.
- d. On a perusal of the Master Service Agreement, it is evident that the scope of services includes supply, installation and commissioning of such GPS trackers. In terms of the aforesaid Master Service Agreement, the Petitioner is required to supply, install and commission the tracker system.



8. The Operational Creditor has filed its rejoinder and has asserted the following contentions:

a. It is submitted that the Operational Creditor and the Corporate Debtor entered into a Memorandum of Understanding dated 21.05.2013. It is submitted that the Corporate Debtor under the guise of 'Company Affiliate' made the Operational Creditor to execute Master Service Agreements with distillery production line equipment suppliers to provide back office support systems and uniform maintenance and managed services. It is submitted that the Corporate Debtor executed Managed Services Agreement with the Operational Creditor for providing through its employees and third party contractors, HPFS managed services in support of HPFS information technology infrastructure in the project sites and premises of beverage corporation depots of the State of Andhra Pradesh and the State of Telengana. It is submitted that pursuant to above Agreements, the Operational Creditor has supplied 804 numbers HIPPO GPS Vehicle Tracker system and provided managed and professional services to the Corporate Debtor, and the copies of documents enclosed to Annexure-17.

b. It is submitted that the email correspondence exchanged till April 16, 2016 by and between the Operational Creditor and the Corporate Debtor profusely establishes the Claim of the Operational Creditor for the outstanding payment of



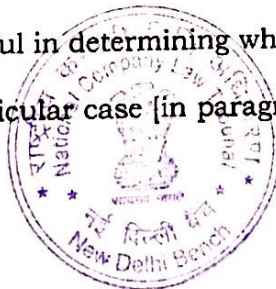
Operational Debt for the supply of GPS vehicle tracker systems and providing managed and professional services thereon. It is submitted that the Corporate Debtor, without a specific denial of the Emails/ Operational Creditor's ledger Account Statement, TDS Deductions/Certificates and bank payments annexed to the Company Petition/Form No. 5 vide Annexure No. 2 and 6; in fact admitted it's liability to the effect that an amount of Rs. 53,99,228/- ( Rs. 50,32,028/- + Rs. 3,67,200/-) is outstanding due payable to the Operational Creditor.

c. It is submitted that the Hon'ble Supreme Court in the matter Mobilox Innovations Pvt. Ltd. (Corporate Debtor) versus Kirusa Software Pvt. Ltd. (Civil Appeal No. 9405 of 2017), [in paragraph no. 24 on page no. 63 of the judgment] held that- 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. It is further submitted that in the instant case, the Corporate Debtor has not brought to the notice of the Operational Creditor the 'existence' of dispute pending between the parties.

d. It is further submitted that the Hon'ble Supreme Court considered various formulations referred to in the Judgment that can be helpful in determining whether there is a genuine dispute in a particular case [in paragraph no. 37 on page no.

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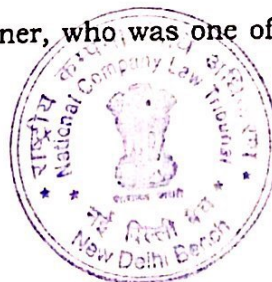
82 of the judgment) held that – In our view a ‘genuine’ dispute requires that the dispute be bona fide and truly exist in fact; the grounds for alleging the existence of a dispute are real and not spurious, hypothetical, illusory or misconceived.

- e. It is submitted that the Corporate Debtor, inspite of, admission and acknowledgment of E-mails/Delivery Challans/ Pro-forma Invoices/Invoices/Way Bills/Ledger Account Statements/Bank Payments/TDS Deductions/TDS Deposits with Income Tax Department etc., pertains to supply of 804 nos. GPS trackers by the Operational Creditor, now trying to take false, untenable and fanciful contentions to create spurious dispute that are put to strict proof and such false pleas are taken in order to create false defence under the guise of misconceived dispute, knowing the imminent order of Corporate Insolvency Resolution Process under IBC.

9. The Corporate Debtor has filed its sur-rejoinder in response to the rejoinder filed by the Operational Creditor and has asserted the following contentions:

- a. It is submitted that the documents submitted by the Petitioner are not only incomplete but also pertain to the transactions for which there is an existing dispute between the parties as the Petitioner, who was one of the vendors of

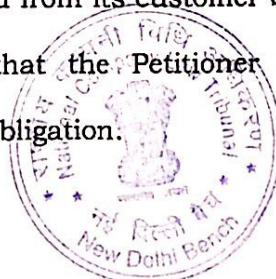
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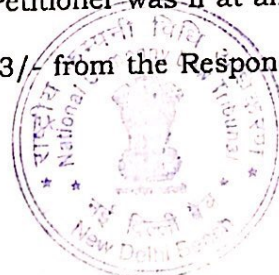
the Respondent and its other consortium partners, has not discharged its contractual obligations.

- b. It is submitted that the Petitioner has suppressed material facts while filing the present petition before this Hon'ble Tribunal and did not enclose all the relevant documents in the petition in order to show a debt recoverable from the Respondent. The Petitioner has attached the documents in relation to supply of 804 GPS tracking vehicles in its rejoinder despite the same having been available to it before the petition was filed. Under these circumstances, the Petitioner should not be allowed to place the documents attached to the rejoinder on record after having suppressed the same in its petition. Such dilatory tactics should not be allowed to prevail as it would be inequitable and against the very basic tenets of law and justice.
- c. That though the Petitioner did not discharge its contractual liabilities as various GPS tracking systems including all 30 GPS tracking systems were not installed, however, there is no outstanding amount which is payable by the Respondent in view of the fact that the Respondent had already made payments in excess, which is clearly evident from the documents filed by the Petitioner itself. The Respondent has enclosed the letter received from its customer Soaring Spirits Pvt Ltd, which proves that the Petitioner has failed to discharge its contractual obligation.

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- d. The Respondent submitted that the ledger maintained by him has been enclosed by the Petitioner in the petition at page nos.22 & 24 alongwith the e-mails exchanged between them. Further, the Petitioner received an amount of Rs.35,33,175/- directly from the distilleries, which is evident from page no.44 of the petition. On a careful perusal of the documents submitted by the Petitioner itself, it is evident that it is the Petitioner, who owes money to the Respondent totaling to Rs.78,19,829/-.
- e. The Petitioner has claimed that there is an admitted liability of Rs.50,32,028/- against 804 tracking systems and Rs.3,67,200/- against 30 GPS tracking systems supplied to the Respondent, totaling to Rs.53,99,228/-. The claim of the Petitioner is merely based on the e-mail sent by the CD and purchase order for 30 GPS tracking systems. In this regard, the Respondent respectfully submits that the Petitioner has concealed the material facts from this Hon'ble Tribunal and adopted arm-twisting measure for extracting wrongful gains from the Respondent. The Petitioner has used this document in the petition in order to show that there is an admitted liability, however, on a careful perusal of the said documents, it is evident that an amount of Rs.46,82,325/- is recoverable from the vendors and not from the Respondent. Therefore, it can be said that the Petitioner was if at all entitled to get an amount of Rs.7,16,903/- from the Respondent. It is further



pointed out that the statement attached with the petition is not a final statement and the statement itself states that the final values to be arrived. It clearly shows the malafide and malicious intention of the petition to extract monies from the Respondent.

- f. It is further submitted that the Petitioner vide its demand notice dated 20.11.2018 raised a demand of Rs.50,32,028/- with respect to 804 GPS tracking systems, which is apparently time barred. It is a settled law that Limitation Act is applicable to the applications filed u/sec.7 and 9 of the IBC. The Petitioner in order to cover up the limitation issue brought up its claims with regard to the 30 GPS tracking systems in the petition, which is nothing but abuse of the process of law.

10. I have gone through the documents filed by both the parties and heard the arguments and perused written submissions made by both the counsels.

11. Learned Counsel appearing for the Operational Creditor in course of his argument submitted that point of limitation raised by the Corporate Debtor is not liable to be accepted because as per the MOU, the agreement is valid till 2018 and so the Operational Creditor is entitled to file the application within 3 years from 28<sup>th</sup> March, 2018.



12. He further submitted that dispute raised by the Corporate Debtor in the demand notice is not liable to be accepted because the definition of pre-existing dispute as defined in "S.5 (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;" is required to be furnished with the demand notice in view of Section 8 of the IBC, 2016. He further submitted that since the Operational Creditor has to establish that there is a default in payment of account mentioned in the application so the present application may be admitted. On the other hand, Learned Counsel appearing for the Corporate Debtor in course of his argument submitted that the Operational Creditor has failed to enclose the document, which he has enclosed in his rejoinder, at the time of filing of the application, therefore, he is liable to be guilty for placing the mis-statement before this Adjudicating Authority. He further submitted that the Operational Creditor has claimed that he has raised debt with regard to 30 GPS vehicle trackers in the demand notice dated 28<sup>th</sup> November, 2018 but demand notice shows that no such demand has been raised. He further submitted that the claim of the Operational Creditor is barred by limitation. The Corporate Debtor failed to fulfill his contractual obligation and he also failed to produce the ledger/statement proving the debt.

13. Now in the light of the submissions raised on behalf of the parties, I would like to take up the limitation issue at first. I have gone through

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the averments made in the application, reply and rejoinder filed by the respective parties and I find, as per the averments made in Part IV of the Application, the date of raising the invoice are mentioned and it is also mentioned that the debt is due since 12<sup>th</sup> December, 2015. Therefore, according to the Operational Creditor, the date of default is 12<sup>th</sup> December, 2015. The present petition is filed on 11<sup>th</sup> December, 2018.

14. At this juncture, I would like to refer the argument advanced on behalf of the Learned Counsel appearing for the Corporate Debtor who in written submission filed on 12<sup>th</sup> December, 2019 in Para-D.1 submitted that the claim is time barred as the same was issued in between 01<sup>st</sup> April, 2014 to 29<sup>th</sup> September, 2015, whereas the demand notice was issued on 20<sup>th</sup> November, 2018 and the present application is filed on 11<sup>th</sup> December, 2018.

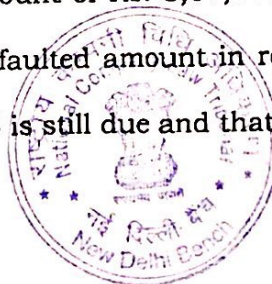
15. In light of the aforesaid submissions, when I shall consider the case in hand then I find, in Part- IV at Column -1 of the application, it is mentioned that last Purchase Order for the supply of 30 numbers of GPS vehicle trackers was issued on 12<sup>th</sup> December, 2015 and due date for payment was 12<sup>th</sup> December, 2015, in support of that, the Operational Creditor filed supplementary additional document supported with affidavit which shows that the last tax invoice was raised on 14<sup>th</sup> December, 2015, in respect of 30 numbers of GPS vehicle trackers and the due date of payment was 14<sup>th</sup> December, 2015 of total amount of Rs. 3,67,200/-



16. At this juncture, I would also refer the reply of Corporate Debtor who in Para-17 of the reply admitted this fact that the Operational Creditor has supplied 30 numbers of vehicle tracker systems whose value is amounting to Rs. 3,67,200/- and that amount, according to the Corporate Debtor, has already been paid to the Operational Creditor.

17. In the light of that averments, when I have gone through the documents filed by the Corporate Debtor then I find that in respect of this contention the Corporate Debtor has not filed any document to show that the said amount has been paid by Corporate Debtor to the Operational Creditor.

18. At this juncture, I would also like to refer the Bank Certificate issued by the authorized signatory of the Axis Bank, where the account of the Operational Creditor is being maintained and the same is at page 280 of the Rejoinder filed by the Applicant in response to the reply filed by the Corporate Debtor and this document shows that certificate is issued by the Authorized signatory of the Axis Bank regarding the non-payment of that amount in the account of the Operational Creditor. Therefore, in such circumstances, I am unable to accept the contention of the Corporate Debtor that Rs. 3,67,200/- has been paid by the Corporate Debtor to the Operational Creditor. Therefore, in my view, the amount of Rs. 3,67,200/- claimed by the Operational Creditor is the defaulted amount in response to the bill raised on 14<sup>th</sup> December, 2015 is still due and that has not been paid



by the Corporate Debtor to the Operational Creditor. Therefore, in view of Article 137 of the Limitation Act, the limitation runs from the date when the right to apply accrues here in the case in hand, when I shall place reliance upon the invoice raised on 14<sup>th</sup> December, 2015, of course, it is mentioned 12<sup>th</sup> December, 2015 at page 11 of the application but this is, in my opinion, due to typographical error, because the document shows it was raised on 14<sup>th</sup> December, 2015 and the present application is filed on 11<sup>th</sup> December, 2018.

19. Therefore, it is within 3 years from the date of 14<sup>th</sup> December, 2015.

Hence, I am unable to accept the contention of the Learned Counsel appeared for the Corporate Debtor that the debt is barred by limitation, rather, I am of the considered view that application is filed by the Operational Creditor is within the time prescribed under Article 137 of the Limitation Act.

20. The Corporate Debtor in the written submission submitted that there is a pre-existing dispute between the parties and another contention is that the Operational Creditor has not enclosed the documents in support of the demand notice. He further submitted that in reply to the demand notice, Corporate Debtor raised this point that invoices are not enclosed alongwith the demand notice and so the demand notice is not in terms of Section 8 of IBC, 2016. And on this ground alone, application is not maintainable.



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21. In the light of that contention, I have gone through the demand notice and I find the invoices on the basis of which the Operational Creditor claimed the amount are referred in Para-1 of the demand notice and at Para-7 the document which are enclosed with the demand notice are also shown. I further find the invoice raised on 12<sup>th</sup> December, 2015 regarding the supply of 30 numbers of Hippo Vehicle tracker are also enclosed alongwith the demand notice.

22. At this juncture, I would also like to refer Section 8 of the demand notice and same is quoted below:-

***"8. Insolvency resolution by operational creditor. -***

*(1) An operational creditor may, on the occurrence of a default, deliver a demand notice of unpaid operational debtor copy of an invoice demanding payment of the amount involved in the default to the corporate debtor in such form and manner as may be prescribed.*

*(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, [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;*

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*(b) the 2[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.*

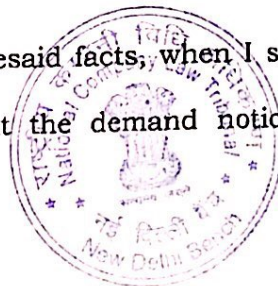
*Explanation. - For the purposes of this section, a "demand notice" means a notice served by an operational creditor to the corporate debtor demanding 3[payment] operational debt in respect of which the default has occurred."*

23. Mere plain reading of the provision contained under Section 8 of IBC, 2016 shows that on the occurrence of default, the Operational Creditor is required to do following thing:-

- i. Deliver demand notice of unpaid operational debt, or
- ii. Deliver a copy of invoice demanding payment of the amount involved in the default to the Corporate Debtor, or
- iii. In the prescribed form, if these conditions are fulfilled then the demand notice delivered by the Operational Creditor will deem to be a valid demand notice.

24. In the light of the aforesaid facts, when I shall consider the case in hand, then I find that the demand notice was delivered. It was

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delivered in the prescribed form and the unpaid operational debt is shown in the demand notice, even the invoices against which the demand notice was delivered is mentioned at Para-7 of the demand notice.

25. So, I find, no force in the contention raised on behalf of the Corporate Debtor that the demand notice was not properly delivered.

26. Apart from the aforesaid facts, in view of Section 8, which I have discussed in the afore-mentioned Para, the Operational Creditor is required to either deliver a demand notice of unpaid operational debt or deliver a copy of invoice demanding payment of the amount.

27. In my opinion, in view of Section 8 of IBC, 2016, it is not necessary to deliver the demand notice as well as the copy of invoice demanding the payment of the amount together. Merely, mentioning the unpaid operational debt in the demand notice on the basis of invoice, in my opinion, would serve the purpose of Section 8 of the IBC, 2016. Therefore, I find, no force in the contention raised on behalf of the Learned Counsel appearing for the Corporate Debtor that demand notice was not properly delivered.

28. Now, coming to the next contention that according to the submission of the Corporate Debtor, there is a pre-existing dispute regarding the amount/debt raised by the Operational Creditor.



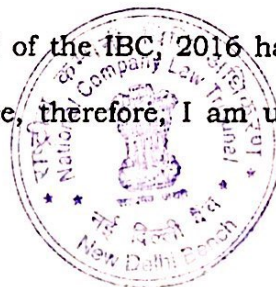
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29. At this juncture, I would like to consider the Section 8 of the IBC, 2016 again which I have referred in the afore-mentioned Para and on the basis of that, it can be said that after receiving the demand notice, the Corporate Debtor within a period of 10 days bring to the notice of the Corporate Debtor, the existence of dispute or record of pendency of the sue or arbitration proceedings.

30. In the light of the aforementioned facts, when I shall consider the case in hand then I find that in response to the demand notice the Corporate Debtor had submitted a reply to the demand notice which is at page 57 and 58, Annexure-4 of main petition. When I have gone through the reply of demand notice then I find, nowhere in the reply the Corporate Debtor has raised this issue that there is an existence of dispute between the parties. Of course, he has mentioned the number of GPS vehicles supplied by the Operational Creditor to the Corporate Debtor that is the dispute regarding the quantity but there is no dispute regarding the quality of the material supplied by the Operational Creditor to the Corporate Debtor. It is nowhere mentioned in the reply of the demand notice the any suit or arbitration proceeding is pending between the parties. Therefore, when I shall consider the reply of the demand notice sent by the Corporate Debtor to the Operational Creditor in terms of Section 8 (2) of the IBC, 2016, then I am of the considered view that no dispute as required under Section 8(2) of the IBC, 2016 has been raised, after receiving the demand notice, therefore, I am unable to accept the



contention of the Corporate Debtor that there is a pre-existing dispute between the parties prior to the delivery of the demand notice even after receiving the demand notice no such issue was raised in the reply sent by the Corporate Debtor to the Operational Creditor. Hence, I find, no force in the contention raised by the Corporate Debtor.

31. At this juncture, I would also like to mention this fact while considering the submissions of the parties on the point of limitation, I have referred the invoice raised in respect of the payment of 30 numbers of vehicle trackers and the amount mentioned in view of the invoice i.e. Rs. 3,67,200/- and I hold that although the amount has been admitted by the Corporate Debtor in his reply but it has not been paid by the Corporate Debtor, which would be evident from the certificate issued by the Bank.

32. Hence, in my considered view that amount is still due and there is default and Corporate Debtor is liable to pay that amount.

33. So far as the dispute regarding quantity / amount is concerned, it is for the IRP to decide what is the exact amount, which the Operational Creditor is entitled to get from the Corporate Debtor.

34. At this juncture, I would like to refer the judgment of Hon'ble NCLAT passed on 02.09.2019 in "**Manjeet Kaur Sran vs. Tricolite Electrical Industries Ltd. (02.09.2019 - NCLAT)**" which is based upon the decision of **Innoventive Industries Limited Vs. ICICI Bank**



reported in 2018 (1) SCC 407 . And the relevant portion of judgment is quoted below:

*"11. In view of the decision of Hon'ble Supreme Court in "Innoventive Industries Ltd. Vs. ICICI Bank (2018) 1 SCC 407]", the Hon. Supreme Court will consider the question of application u/s. 7 and 9 observed as follows:-*

*"27. The scheme of the Code is to ensure that when a default takes place, in the sense that a debt becomes due and is not paid, the insolvency resolution process begins. Default is defined in Section 3(12) in very wide terms as meaning nonpayment of a debt once it becomes due and payable, which includes non-payment of even part thereof or an instalment amount. For the meaning of "debt", we have to go to Section 3(11), which in turn tells us that a debt means a liability of obligation in respect of a "claim" and for the meaning of "claim", we have to go back to Section 3(6) which defines "claim" to mean a right to payment even if it is disputed. The Code gets triggered the moment default is of rupees one lakh or more (Section 4). The corporate insolvency*

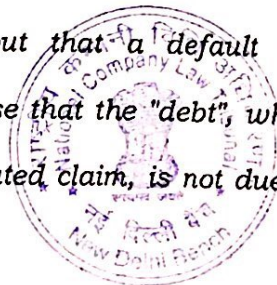


resolution process may be triggered by the corporate debtor itself or a financial creditor or operational creditor. A distinction is made by the Code between debts owed to financial creditors and operational creditors. A financial creditor has been defined under Section 5(7) as a person to whom a financial debt is owed and a financial debt is defined in Section 5(8) to mean a debt which is disbursed against consideration for the time value of money. As opposed to this, an operational creditor means a person to whom an operational debt is owed and an operational debt under Section 5(21) means a claim in respect of provision of goods or services.

28. When it comes to a financial creditor triggering the process, Section 7 becomes relevant. Under the explanation to Section 7(1), a default is in respect of a financial debt owed to any financial creditor of the corporate debtor-it need not be a debt owed to the applicant financial creditor. Under Section 7(2), an application is to be made under sub-section (1) in such form and manner as is prescribed, which takes us to the Insolvency and Bankruptcy (Application to Adjudicating

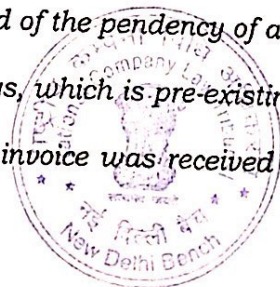


Authority) Rules, 2016. Under Rule 4, the application is made by a financial creditor in Form 1 accompanied by documents and records required therein. Form 1 is a detailed form in 5 parts, which requires particulars of the applicant in Part I, particulars of the corporate debtor in Part II, particulars of the proposed interim resolution professional in part III, particulars of the financial debt in part IV and documents, records and evidence of default in part V. Under Rule 4(3), the applicant is to dispatch a copy of the application filed with the adjudicating authority by registered post or speed post to the registered office of the corporate debtor. The speed, within which the adjudicating authority is to ascertain the existence of a default from the records of the information utility or on the basis of evidence furnished by the financial creditor, is important. This it must do within 14 days of the receipt of the application. It is at the stage of Section 7(5), where the adjudicating authority is to be satisfied that a default has occurred, that the corporate debtor is entitled to point out that a default has not occurred in the sense that the "debt", which may also include a disputed claim, is not due. A debt



may not be due if it is not payable in law or in fact. The moment the adjudicating authority is satisfied that a default has occurred, the application must be admitted unless it is incomplete, in which case it may give notice to the applicant to rectify the defect within 7 days of receipt of a notice from the adjudicating authority. Under sub-section (7), the adjudicating authority shall then communicate the order passed to the financial creditor and corporate debtor within 7 days of admission or rejection of such application, as the case may be.

"29. The scheme of Section 7 stands in contrast with the scheme under Section 8 where an operational creditor is, on the occurrence of a default, to first deliver a demand notice of the unpaid debt to the operational debtor in the manner provided in Section 8(1) of the Code. Under Section 8(2), the corporate debtor can, within a period of 10 days of receipt of the demand notice or copy of the invoice mentioned of a dispute or the record of the pendency of a suit or arbitration proceedings, which is pre-existing - i.e. before such notice or invoice was received by the



corporate debtor. The moment there is existence of such a dispute, the operational creditor gets out of the clutches of the Code.

30. On the other hand, as we have seen, in the case of a corporate debtor who commits a default of a financial debt, the adjudicating authority has merely to see the records of the information utility or other evidence produced by the financial creditor to satisfy itself that a default has occurred. It is of no matter that the debt is disputed so long as the debt is "due" i.e. payable unless interdicted by some law or has not yet become due in the sense that it is payable at some future date. It is only when this is proved to the satisfaction of the adjudicating authority that the adjudicating authority may reject an application and not otherwise."

**12. From the aforesaid finding of the Hon'ble Supreme Court, it is clear that the claim even if disputed, if default is more than Rs. 1 lakh, the Appellant will initiate the proceedings against the 'Corporate Debtor'. Submission is made on behalf of the**

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*Appellant that the amount disputed by the 'Corporate Debtor' amounts to existence of dispute but such submission cannot be accepted.*

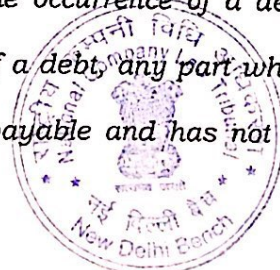
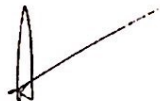
*It does not come within the meaning of existence of dispute. Dispute raised regarding quantum of amount in the absence of any suit or arbitration or other evidence, it cannot be said to be pre-existing dispute."*

35. Now in the light of the aforesaid decision, when I shall consider the case in hand then I find, here in this case also dispute is regarding the quantum of amount and not regarding the quality.

36. Therefore, at this juncture, I would also like to refer the decision of Hon'ble Supreme Court in "**Mobilox Innovations Pvt. Ltd. Vs. Kirusa Software (P) Limited- 2017 1 SCC OnLine SC 353**", wherein the Hon'ble Supreme Court observed:

*"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*

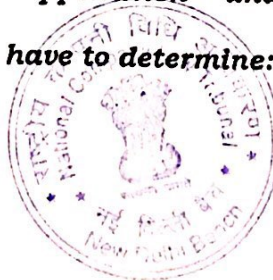
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repaid), deliver a demand notice of such unpaid operational debt or deliver the copy of an invoice demanding payment of such amount to the corporate debtor in the form set out in Rule 5 of the Insolvency and Bankruptcy (Application to Adjudicating 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. ....”**

**“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)*

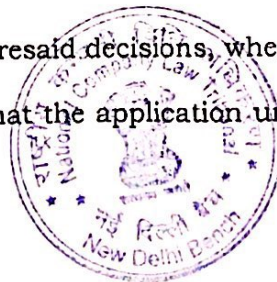
*(ii) Whether the documentary evidence furnished with the application shows that the aforesaid debt is due and payable and has not yet been paid? and*

*(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."*

37. Therefore, in the light of the aforesaid decisions, when I shall consider the case in hand, then I find that the application under section 9 (2)

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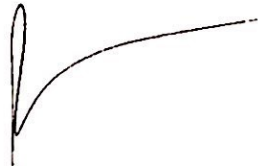
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of the Code is complete, at least default of Rs. 3,67,200/- is admitted by the Corporate Debtor and that has not been paid. It is established by the certificate issued by the Axis Bank which is at page number 280 Annexure 19. Hence, there is no payment of unpaid operational debt, the demand notice has been delivered by the Operational Creditor, no notice of dispute has been raised and the amount is more than 1 lakh. Since these contentions are fulfilled then the Adjudicating Authority has no option but to admit the application of the Operational Creditor.

38. Considering the aforesaid circumstances, this Adjudicating Authority is inclined to admit this petition and initiate CIRP of the Corporate Debtor. Accordingly, this petition is **admitted**. A moratorium in terms of Section 14 of the Insolvency & Bankruptcy Code, 2016 shall come into effect forthwith staying:-

- (a) *the institution of suits or continuation of pending suits or proceedings against the corporate debtor including execution of any judgement, decree or order in any court of law, tribunal, arbitration panel or other authority;*
- (b) *transferring, encumbering, alienating or disposing of by the corporate debt or 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 Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002;*

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(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.

Further:

(2) The supply of essential goods or services to the corporate debtor as may be specified shall not be terminated or suspended or interrupted during moratorium period.

(3) The provisions of sub-section (1) shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.

(4) The order of moratorium shall have effect from the date of such order till the completion of the corporate insolvency resolution process:

*Provided that where at any time during the corporate insolvency resolution process period, if the Adjudicating Authority approves the resolution plan under sub-section (1) of section 31 or passes an order for liquidation of corporate debtor under section 33, the moratorium shall cease to have effect from the date of such approval or liquidation order, as the case may be."*

39. The Operational Creditor has not proposed the name of any IRP.

Accordingly, I appoint Mr. Shyam Arora, an Insolvency Professional, registration no. IBBI/IPA-002/IP-N00546/2017-2018/11703 email- [arora.shyaam@yahoo.com](mailto:arora.shyaam@yahoo.com) duly empanelled with the IBBI as the IRP.

He is directed to take such steps as are mandated under the Code,

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more specifically under Sections 15, 17,18,20 and 21 and shall file his report before the Adjudicating Authority.

40. The Operational Creditor is directed to deposit a sum of Rs. 2 lakhs to meet the immediate expenses of IRP. The same shall be fully accountable by the IRP and shall be reimbursed by the CoC, to the Operational Creditor to be recovered as CIR costs.

41. Copy of the order be sent to both the parties as well as to the IRP.

42. To come up on for further consideration.



Sd-

**ABNI RANJAN KUMAR SINHA**

**Member (J)**

*Mh* 24.1.2020  
**Deputy Registrar**  
National Company Law Tribunal  
CGO Complex, New Delhi-110002