

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

Company Appeal (AT) (Ins.) No. 1695 of 2024

(Arising against the impugned order dated 22.08.2024 passed by the Hon'ble National Company Law Tribunal, Ahmedabad Bench in C.P. (IB)/198/AHM/2023)

IN THE MATTER OF:

Rakesh Bhailalbhai Patel

(Suspended Director of Vasundhara Seamless Stainless Tubes Private Limited)

Registered Office at 9-B, 9th Floor,
B.D. Patel House, Naranpura Road,
Ahmedabad - 380009, Gujarat.

...Appellant

Versus

Vasundhara Seamless Stainless Tubes Private Limited,

(Through its Interim Resolution Professional, Mr. Sachin Naveen Sinha)

Registered Office at 9-B, 9th Floor,
B.D. Patel House, Naranpura Road,
Ahmedabad - 380009, Gujarat

...Respondent No.1

Hiralal Bhimjibhai Kumavat,

Proprietor of B. N. Enterprises,

Add: 1/ 132, Sarvodaynagar,
Bhuyangdev Cross Roads,
Ahmedabad-380061.

...Respondent No.2

Present:

For Appellant: **Mr. Abhijeet Sinha, Sr. Advocate, Mr. Malak Bhatt, Ms. Neeha Nagpal, Mr. Saikat Sarkar, Ms. Nitya Prabhakar, Advocates.**

For Respondents: **Mr. Navin Pahwa, Sr. Advocate, Mr. Himanshu Satija, Mr. Harsh Saxena, Ms. Ridhi Ranjan, Advocates.**

Cont'd.... /

J U D G M E N T
(17th October, 2025)

INDEVAR PANDEY, MEMBER (T)

This appeal has arisen from the order dated 22.08.2024 passed by the National Company Law Tribunal, (Adjudicating Authority) Ahmedabad Bench in C.P. (IB)/198/AHM/2023. The Adjudicating Authority admitted the petition filed under Section 9 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as Code) filed by Mr. Hiralal Bhimjibhai Kumavat, the proprietor of B.N. Enterprises (Operational Creditor) and Respondent No. 2 herein. The Adjudicating Authority vide the impugned order directed the initiation of the Corporate Insolvency Resolution Process (CIRP) against Vasundhara Seamless Stainless Tubes Private Limited, the Corporate Debtor (CD).

2. The Appellant Sh. Rakesh Bhailabhai Patel, the suspended director of the Corporate Debtor, has preferred this appeal challenging the admission order on the grounds that the petition was entertained despite serious disputes as to the debt, fabrication of documents, inconsistency in the alleged dates of default, and non-fulfilment of statutory prerequisites under the Code. The Corporate Debtor represented through its Interim Resolution Professional Sh. Sachin Naveen Sinha is the Respondent No.1 herein.

3. The brief facts of the case are as given below:

- i. The Corporate Debtor, Vasundhara Seamless Stainless Tubes Private Limited, which had been incorporated in the year 2014, was engaged in

the business of manufacturing structural metal products, tanks, reservoirs and steam generators.

- ii. The CD came under a new management w.e.f 25.06.2021. The appellant was appointed as a Director of the CD w.e.f 05.05.2023.
- iii. Prior to the appointment of Appellant in CD, under the old management, a Sale Agreement was executed on 31.01.2019 between Corporate Debtor and Respondent No. 2 for the sale of machineries and scrap for a total consideration fixed at Rs.1 Crore. The machineries and scrap were lying in the premises of the 'Choksi Tubes Company', which was also owned by the CD and was situated on the Kalol Rancharda Highway at Moti Bhoyan village, Distt. Gandhinagar, Gujarat.
- iv. Pursuant to the terms of this Sale agreement, Respondent No. 2 advanced the entire sum of Rs.1 Crore within the period between 29.01.2019 and 27.02.2019, by way of one demand draft of ₹20 lakhs, a cheque of ₹40 lakhs encashed on 14.02.2019, and another cheque of ₹40 lakhs encashed on 27.02.2019.
- v. The agreement specifically obligated Respondent No. 2 to lift the scrap within a period of thirty days from the date of execution (31.01.2019), which meant the last date of lifting the scrap was 01.03.2019. The Appellant's case is that the scrap was duly lifted in several tranches during February itself, thereby bringing the contract to a conclusion.
- vi. Contrary to this position, Respondent No. 2 alleged that the Corporate Debtor did not permit removal of the scrap and claimed to have issued

letters on 01.05.2019, 12.11.2019, 06.06.2022, and 23.03.2023, demanding either permission to lift the material or a refund of the advance. The Appellant claims that these letters were never received, are fabricated in nature, and were allegedly acknowledged by a fictitious person named “Darshan Palan,” who had no connection with the Corporate Debtor.

- vii. The original signatory of the agreement, Late Shri Akshay Bhatt, who represented the Corporate Debtor, passed away on 13.12.2019, and thereafter, on 25.06.2021, a new Board of Directors assumed control of the company, followed by a change in the registered office address on 01.09.2021 from Narayan Complex, Navrangpura, Ahmedabad, to B.D. Patel House, Naranpura Road, Ahmedabad.
- viii. Respondent No. 2 issued a demand notice under Section 8 of the Code on 01.05.2023 (dispatched on 03.05.2023) to the CD. The CD did not reply to the notice u/s 8 of the Code. On 23.06.2023, Respondent No. 2 filed a petition under Section 9 of the Code, before the NCLT, Ahmedabad, being C.P. (IB)/198/AHM/2023, claiming refund of the said amount of Rs.1 Crore.
- ix. During the proceedings CD sought time to file its reply, however, the same was not filed despite several opportunities being given to them. On 23.04.2024, the Adjudicating Authority proceeded ex parte and closed its right to file a reply. Subsequently, Respondent No. 1 moved an interlocutory application (I.A. No. 1708 of 2024) on 04.07.2024

seeking recall of the ex parte order and an opportunity to file a detailed reply.

- x. The Adjudicating Authority, after heard the final arguments from both sides on 02.08.2024, and after obtaining the written submissions from both the parties, passed the order dated 22.08.2024 admitting the Section 9 petition, thereby initiating CIRP against the Corporate Debtor. The present appeal arises from the aforesaid order.

Submission of the appellant

4. In his opening remark Ld. Counsel for the Appellant stated that the present Appeal arises out of the impugned order dated 22.08.2024 passed by the Learned National Company Law Tribunal, Ahmedabad Bench ("Ld. NCLT") in CP(IB)/198/AHM/2023, whereby the application under Section 9 of the Code filed by Respondent No. 2 – Hiralal Bhimjibhai Kumavat, Proprietor of B.N. Enterprises ("Operational Creditor") was admitted against the Corporate Debtor.

5. Ld. Counsel submits that the impugned order is unsustainable for three primary reasons: (i) there exists no "operational debt" within the meaning of Section 5(21) of the IBC; (ii) there is no default in law or in fact, as alleged by the Operational Creditor; and (iii) the impugned order is a wholly unreasoned and non-speaking order, passed without considering or dealing with any of the detailed objections raised by the Corporate Debtor, despite the reply being formally taken on record by a separate order passed on the same day.

6. Counsel for the Appellant submits that the debt claimed by Respondent No. 2 originates from a Sale Agreement dated 31.01.2019. The said agreement is purely a commercial contract concerning the sale of machinery and scrap, and does not fall within the ambit of “operational debt” as defined under Section 5(21) of the IBC. Under the agreement, Respondent No. 2 was to lift scrap material lying in the premises of the “Choksi Tubes Company” against a sale consideration of Rs. 1 Crore.

7. Pursuant to this arrangement, Respondent No. 2 made advance payments as follows:

- Rs. 20 lakhs by DD No. 695 dated 29.01.2019;
- Rs. 40 lakhs by Cheque No. 002104 dated 12.02.2019, duly encashed on 14.02.2019;
- Rs. 40 lakhs by Cheque No. 002105 dated 24.02.2019, duly encashed on 27.02.2019.

8. As per Clause 1 of the Agreement, it was the clear obligation of Respondent No. 2 to lift the scrap within 30 days, i.e., by 02.03.2019. Under Clauses 3 and 4, the Corporate Debtor was under no obligation to grant permission or facilitate lifting except to intimate the local police authorities. Thus, the entire case of the Operational Creditor that it could not lift the scrap due to non-cooperation stands falsified, especially since the scrap was, in fact, lifted and all payments were duly honoured.

9. Furthermore, the counsel submitted that the agreement nowhere contains a clause mandating refund of advance amounts. In absence of such

a stipulation, no enforceable liability arises and therefore no operational debt can be said to exist.

10. Ld. Counsel further points out that entries in the Corporate Debtor's balance sheet merely reflect accounting disclosures necessitated by the Respondent's failure to provide GSTIN details as required under Clause 5 of the Agreement. Since no GST details were shared, invoices could not be issued, and the advance amount was carried forward only for compliance purposes. Such accounting entries cannot be treated as acknowledgment of debt. The Supreme Court has consistently held that balance sheet entries, unless accompanied by unequivocal intent to admit liability, cannot constitute acknowledgment under Section 18 of the Limitation Act. In this regard he invited our attention to the following Judgments of Hon'ble Supreme Court: '*Asset Reconstruction Co. v. Bishal Jaiswal* (2021) 6 SCC 366; *SBI v. Krishidhan Seeds (P) Ltd.* (2023) 1 SCC 209'; '*S. Natarajan v. Sama Dharman* (2021) 6 SCC 413'; '*Khan Bahadur Shapoor Fredoom Mazda v. Durga Prasad Chamaria* (1962) 1 SCR 140'.

11. Without prejudice, Ld. counsel submits that even if arguendo any operational debt were assumed, the element of default under Section 3(12) of the IBC is absent. Respondent No. 2 was obligated to lift the scrap within the contractual period, but raised no contemporaneous grievance or complaint regarding non-cooperation.

12. Ld. Counsel submitted that the letters relied upon by the Respondent dated 01.05.2019, 12.11.2019, 06.06.2022, and 23.03.2023 are fabricated documents. They are not addressed to the authorized representative

mentioned in the Agreement, but rather to one Mr. Darshan Palan, who was neither an employee nor an authorized signatory of the Corporate Debtor. These letters, spanning four years and delivered to unrelated addresses, lack authenticity and were created post expiry of the contract and after a complete change in management. Significantly, during the management of Mr. Akshay Bhatt, who oversaw these transactions, no disputes were ever raised.

13. Ld. Counsel emphasized that the Sale Agreement imposed no positive obligation on the Corporate Debtor to deliver or arrange removal of scrap. Its sole obligation was to intimate the police authorities, which was duly complied with. Hence, no “default” can be attributed.

14. It is the submission of Appellant that if the Corporate Debtor had genuinely failed in its obligations, no prudent creditor would have continued issuing and encashing cheques, as Respondent No. 2 did. Such conduct negates the allegation of default.

15. Counsel further submits that the Section 9 application is vitiated by mala fides and unclean hands, as it relies upon fabricated documents. The allegedly concocted letters, falsely attributed to the Appellant, were created solely to extend limitation and fabricate default. The Appellant has already filed a police complaint against Respondent No. 2 in this respect, and in proceedings under RTI, Respondent No. 2 himself admitted before police authorities that the entire scrap material had been duly received.

16. Ld. Counsel further submitted that despite a specific order of the Ld. NCLT dated 29.01.2024, Respondent No. 2 failed to furnish a certificate of

default from NeSL. On the NeSL portal itself, the debt stands marked as “Disputed.” The dates of default stated in the Demand Notice and the Section 9 application are contradictory, and such inconsistencies strike at the root of maintainability. It is a settled principle that one debt cannot have two separate default dates.

17. Ld. Counsel also points out that the alleged date of default falls beyond the limitation period of three years. There is no acknowledgment under Section 18 of the Limitation Act to save limitation. Thus, the application is nothing more than a debt recovery exercise camouflaged under the guise of insolvency proceedings, which is impermissible under the scheme of the IBC.

18. Ld. Counsel finally submits that the impugned order is liable to be set aside as it is a non-speaking order. The Ld. NCLT, while admitting the Section 9 petition, simultaneously allowed IA No. 1078/2024 and took the Corporate Debtor’s reply on record. Despite this, the impugned order does not deal with a single submission, document, or objection raised by the Appellant.

19. The order summarily dismisses the Appellant’s defence as irrelevant without assigning any reasons. Such adjudication violates the settled principles of natural justice. It is trite law that admission under Section 9 is not a mere procedural exercise; the Adjudicating Authority is required to determine whether an operational debt exists, whether it is undisputed, and whether a default has occurred. By failing to examine these core elements, the Ld. NCLT abdicated its statutory function.

20. The impugned order, thus being mechanical, unreasoned, and non-speaking, stands vitiated in law and is unsustainable.

21. In light of the above submissions, counsel for the Appellant respectfully prays that this Hon'ble Tribunal may be pleased to Allow the present appeal and set aside the impugned order dated 22.08.2024 passed by the NCLT Ahmedabad Bench in CP(IB)/198/AHM/2023.

Submission of the Respondent No.2/ Operational Creditor

22. The learned counsel submits that the Corporate Debtor entered into a Slump Sale Agreement dated 31.01.2019 with the Operational Creditor for the sale of machineries and scrap lying in the factory premises of *Choksi Tubes Company* for a total sale consideration of Rs. 1 Crore. The said agreement clearly outlines the obligations of both parties under Clauses 1-3, 5, and Clause 8, which stipulates the date of enforcement and performance of the agreement.

23. Ld. Counsel stated that pursuant to the said agreement, Respondent No. 2 made advance payments aggregating to Rs. 1 Crore in the following manner—Rs. 20,00,000/- by Demand Draft No. 695 dated 29.01.2019, Rs. 40,00,000/- by Cheque dated 12.02.2019, and another Rs. 40,00,000/- through cheque subsequently.

24. He further submits that the Operational Creditor issued various letters to the Corporate Debtor seeking permission to lift the scrap material and machinery from the premises. The said letters, duly stamped and acknowledged by the Corporate Debtor, have been placed on record. However,

despite repeated written requests, the Corporate Debtor failed to either permit the lifting of material or refund the advance amount, thereby committing a default.

25. The counsel further submits that the following material facts stand undisputed:

- a) the execution of the Agreement dated 31.01.2019;
- b) the receipt of advance payments aggregating to Rs. 1 Crore; and
- c) the fact that the scrap and machineries were never permitted to be lifted by the Respondent No. 2. The Appellant himself admitted during the hearing that the goods were not collected by the Respondent.

26. The counsel submits that the Operational Creditor squarely qualifies as a *creditor* within the meaning of Section 3(10) of the Code, as the debt arises from a lawful commercial transaction, giving rise to a "right to payment" under Section 3(6) of the Code due to breach of contractual obligations.

27. He further submitted that the claim of the Operational Creditor arises from supply of goods and services in connection with the sale of scrap and machinery and therefore constitutes an "operational debt" under Section 5(21) of the Code. The present claim is thus fully maintainable under Section 9 of the Code.

28. The learned counsel places reliance on the judgment of the Hon'ble Supreme Court in *Consolidated Construction Consortium Ltd. v. Hitro Energy Solutions Pvt. Ltd.*, (2022) 7 SCC 164, wherein it was categorically held that

even a purchaser/procurer who makes advance payment for goods or services to the Corporate Debtor would qualify as an Operational Creditor. Hence, the Respondent's status as an Operational Creditor stands firmly established.

29. He further submitted that despite repeated requests, the Corporate Debtor did not permit the Operational Creditor to collect the machinery and scrap as per the terms of the Agreement. The letters evidencing these requests bear the acknowledgment and stamp of the Corporate Debtor.

30. Ld. Counsel stated that, since the Corporate Debtor remained unresponsive, the Operational Creditor, constrained by such inaction, issued a *Demand Notice dated 01.05.2023* in terms of Section 8 of the Code. The said demand notice has been placed on record.

31. The counsel for the Respondent No.2 submits that the Corporate Debtor has, in its own *Audited Balance Sheet* as on 31.03.2022 explicitly acknowledged the name of *B.N. Enterprises*, a proprietorship of the Operational Creditor, under the head "*Advance from Others*", thereby admitting its liability of Rs. 1 Crore.

32. The Counsel submits that the Audit Reports for Financial Years 2020–21 and 2021–22 reflect the same outstanding amount, thereby evidencing continuity of acknowledgment of debt. The Corporate Debtor's plea that such entries were mere accounting adjustments due to GST issues is baseless and afterthought, as any genuine dispute in accounting requires a qualifying note, which is absent in this case.

33. Accordingly, in view of Ld. Counsel for Respondent No.2 there exists a clear, unequivocal, and continuing admission of liability amounting to Rs. 1 Crore, thereby satisfying the minimum threshold under Section 4 of the Code.

34. The Ld. counsel stated that the Appellant has failed to produce any documentary evidence suggesting the existence of a genuine dispute prior to the issuance of the demand notice.

35. Ld. Counsel submits that no reply or notice of dispute was filed in response to the demand notice dated 01.05.2023. Further, the Appellant repeatedly defaulted in filing its reply to the Section 9 petition despite being granted five opportunities by the Adjudicating Authority on 30.08.2023, 06.10.2023, 21.11.2023, 29.01.2024, and 11.03.2024.

36. The Respondent submitted that only after the NCLT, vide its order dated 23.04.2024, closed the Corporate Debtor's right to file a reply, did the Corporate Debtor attempt to file one belatedly on 01.08.2024, which was taken on record merely for completeness. These facts demonstrate that there was no pre-existing dispute between the parties.

37. The counsel submits that the Appellant's reliance on a police complaint dated 20.07.2024 is wholly misplaced and fabricated. The said complaint, alleging forgery of certain correspondence dated 01.05.2019, 12.11.2019, 06.06.2022, and 23.03.2023, was lodged long after the demand notice and even after the Section 9 petition was heard and reserved for orders.

38. He states that the timing of the complaint itself exposes its mala fide intent as it was filed over a year after the last letter of the Operational Creditor

and more than a year after the demand notice, merely to create an illusion of dispute. Such afterthought actions cannot invalidate the Section 9 proceedings.

39. He submitted that it is settled law that disputes raised after issuance of the demand notice cannot be termed *pre-existing*. Moreover, a mere marking of a debt as "disputed" in the NESL record does not suffice to establish the existence of a bona fide dispute under the IBC, unless supported by documentary proof predating the demand notice.

40. The counsel submits that proceedings under Section 9 of the Code are inherently summary in nature. The Adjudicating Authority is not expected to conduct a detailed trial or evaluate evidentiary aspects beyond determining whether (i) an operational debt exists, (ii) a default has occurred, and (iii) there is no pre-existing dispute.

41. This position has been consistently upheld by this Hon'ble Tribunal, including in '*Indo Alusys Industries Ltd. v. SMW Steel Pvt. Ltd. [Company Appeal (AT) (Ins.) No. 409 of 2019]*', where it was held that proceedings under Section 9 of the Code are summary in nature and do not permit detailed adjudication of complex factual controversies.

42. The counsel further submits that the Hon'ble NCLT has rightly held that the cause of action in the present case is continuous. The Slump Sale Agreement dated 31.01.2019 was followed by successive letters and acknowledgments by the Corporate Debtor, including its audited accounts till FY 2021-22, thereby extending limitation.

43. He stated that the payments were made on 29.01.2019 and 12.02.2019, and repeated letters dated 01.05.2019, 12.11.2019, 06.06.2022, and 23.03.2023 were issued by the Operational Creditor seeking performance of the agreement. The demand notice was served on 01.05.2023, followed by filing of the Section 9 petition on 23.06.2023, well within limitation.

44. The counsel further invited our attention to the Hon'ble Supreme Court's order in *In Re: Suo Motu Writ Petition (C) No. 3 of 2020*, dated 10.01.2022, excluding the period between 15.03.2020 and 22.02.2022 from computation of limitation, further validates that the petition is well within prescribed time limits.

45. In light of the above, the counsel submits that the NCLT, Ahmedabad, has rightly admitted the Section 9 application since all the statutory preconditions under the Code stand fully satisfied, namely:

- i. Existence of operational debt and default;
- ii. Clear admission of liability by the Corporate Debtor; and
- iii. Absence of any pre-existing dispute.

46. He therefore submitted that the appeal filed by the Appellant deserves to be dismissed with costs, and the admission order passed by the Adjudicating Authority ought to be upheld in the interest of justice.

Analysis and findings

47. We have gone through the records of the case including the written submissions of the parties, and have heard both parties at length. The contesting respondent in this matter is the Operational Creditor/ Respondent No.2. The CD represented by Interim Resolution Professional/ Respondent No.1 is only a proforma respondent.

48. The key issue in this appeal revolves around the nature of the transaction between the Corporate Debtor and the Operational Creditor arising out of the *Sale Agreement dated 31.01.2019*. The question before this Tribunal is whether the amount of ₹1 crore, admittedly paid by the Operational Creditor to the Corporate Debtor, constitutes a *legally recoverable operational debt*, and whether the Corporate Debtor's failure to deliver the contracted goods or refund the amount amounts to a *default* as contemplated under Section 3(12) of the IBC. The Appellant (suspended director) contends that no operational debt exists, as the transaction was fully concluded in 2019 and the scrap was lifted by the Operational Creditor. The Respondent/Operational Creditor on the other hand, asserts that despite advance payment, the Corporate Debtor failed to permit lifting of the scrap or refund the consideration, thereby committing default.

49. The Appellant argues that the Section 9 application was wrongly admitted since the debt claimed by Respondent No. 2 does not qualify as an "operational debt". It is his submission that the Agreement dated 31.01.2019 was merely a one-time sale contract for scrap and machinery. Under Clause 1 of the Agreement, the Operational Creditor was required to lift the scrap

within thirty days from the date of execution, and the Corporate Debtor had no further obligation beyond informing local authorities prior to removal. According to the Appellant, the Operational Creditor had lifted the scrap during February 2019 itself, and thus, no amount remained due.

50. The Appellant further argues that there was no clause in the Agreement mandating refund of advance payment, and hence, no obligation to repay could arise in law. The entries in the Corporate Debtor's balance sheet showing the amount of Rs. 1 crore under "Advance from others" are explained as mere accounting disclosures, maintained due to non-receipt of GST details from the Operational Creditor, not as acknowledgment of liability. It is also argued that the alleged letters dated 01.05.2019, 12.11.2019, 06.06.2022, and 23.03.2023 are fabricated documents manufactured to create an artificial extension of limitation and to project a false default. In support, the Appellant relies on *Asset Reconstruction Company (India) Ltd. v. Bishal Jaiswal* (2021) 6 SCC 366, contending that entries in financial statements do not constitute acknowledgment of debt unless accompanied by a clear intention to pay. The Appellant also asserts that the dispute between the parties was of a purely civil nature, arising from alleged breach of a contract, and could not be adjudicated under the IBC.

51. The Respondent No. 2, on the other hand, submits that the amount of Rs.1 crore was paid to the Corporate Debtor in three tranches between 29.01.2019 and 27.02.2019 towards purchase of scrap and machinery under the Sale Agreement. Despite repeated requests made through letters dated 01.05.2019, 12.11.2019, 06.06.2022, and 23.03.2023, the Corporate Debtor

failed to permit collection of the scrap or to refund the advance. The Respondent emphasizes that all such communications were duly acknowledged by the Corporate Debtor through its official stamp and seal, proving continuous correspondence and acknowledgment of liability.

52. The Respondent further points out that the Corporate Debtor's audited balance sheets for FY 2020–21 and 2021–22 reflect the amount of Rs.1 crore as "Advance from Others," specifically naming *B.N. Enterprises* (proprietorship of the Operational Creditor). No explanatory notes or disclaimer accompanies these entries, which, according to the Respondent, constitutes a clear admission of debt.

53. The Respondent has cited the Judgment of Hon'ble Supreme Court in '*Consolidated Construction Consortium Ltd. Vs. Hitro Energy Solutions Pvt. Ltd.*' [(2022) 7 SCC 164] which clarifies that the definition of Operational Debt encompasses amount paid in advance for the purchase of goods and services.

54. In order to determine whether an "operational debt" exists, the Tribunal must examine whether the claim arises out of (i) provision of goods or services, or (ii) a transaction having a direct nexus with operation of the corporate debtor. It is an admitted fact that the Corporate Debtor received Rs.1 crore from the Operational Creditor under the Sale Agreement dated 31.01.2019. The Corporate Debtor's argument that this amount ceased to be a debt, because the scrap was lifted is unsupported by any evidence such as delivery receipts, gate passes, weighment slips, or transport records. The mere assertion that the scrap was "lifted" cannot rebut the consistent documentary trail of letters written by the Operational Creditor spanning four years,

repeatedly seeking delivery of scrap or refund of payment. These letters bear the Corporate Debtor's seal and acknowledgement, which have not been convincingly explained. There is no reply on record from the Appellant to controvert this even after receiving the notice of default u/s 8 of the code in May 2023.

55. The further argument of the Appellant that there was no contractual clause mandating refund is legally untenable. The law implies an obligation to refund consideration received, when performance becomes impossible or is not rendered, as embodied in Sections 65 and 70 of the Indian Contract Act, 1872. Thus, even in the absence of an explicit refund clause, the Corporate Debtor was legally bound to return the money once it failed to deliver the goods.

56. We note that the Hon'ble Supreme Court in *Consolidated Construction Consortium Ltd. v. Hitro Energy Solutions Pvt. Ltd.* (2022) 7 SCC 164, has held that a purchaser who has made advance payments for supply of goods is an operational creditor, when such goods are not supplied. The rationale was that the debt arises "in respect of provision of goods or services," and failure to perform creates a right to payment. The relevant extract of the Judgment is extracted below:

"4. The key points from the aforementioned judgment are as follows:

a. Section 5(21) of the IBC defines 'operational debt' as "a claim in respect of the provision of goods or services". Thus, there must be some nexus of the claim with the provisions of goods and services.

b. Section 8(1) of the IBC in conjunction with Rule 5(1) and Form 3 of the 2016 Application Rules specifies that an operational creditor

(Appellant herein) may issue a notice regarding an operational debt through either a demand notice or an invoice. Thus, the presence of an invoice for goods or services supplied is not essential, as a demand notice alone is sufficient to establish the existence of a debt.

c. There exist two options for an operational creditor seeking to claim an operational debt in CIRP as per Regulation 7(2)(b)(i) and (ii) of the CIRP Regulations:

i. Relying on a contract for the supply of goods and services with the corporate debtor;

ii. Presenting an invoice demanding payment for goods and services supplied to the corporate debtor.

The former is wide enough to encompass all types of contracts for the supply of goods and services between the operational creditor and the corporate debtor. Thus, a debt arising from advance payment made to a corporate debtor for the supply of goods or services qualifies as an operational debt.

(Emphasis supplied)

57. Applying that ratio of the Judgment Consolidated construction (supra) here, the Operational Creditor's claim for refund of advance directly flows from the Corporate Debtor's failure to deliver goods, and therefore constitutes an operational debt under Section 5(21) of the Code.

58. We note that the audited financial statements of the Corporate Debtor further corroborate the Respondent's case. We take a look at the last Balance Sheet of CD for the FY 2021-22 which is on record. It is to be noted that the balance sheet of FY 2021-22 has been prepared during the period the new management was in place. The relevant pages of the Balance Sheet of the CD are at pages 212 and 217 of the appeal are extracted below:

Vasundhara Seamless Stainless Tubes Private Limited

NOTE - 5.

TRADE PAYABLE :

- (a) Creditors for Goods
- (b) Creditors for Expenses

1,22,500	
1,22,500	

NOTE - 6.

OTHER CURRENT LIABILITIES :

- (a) Advance from Customers
- (b) Others Payables
- (c) T.D.S Payable

4,57,00,000	7,26,54,917
1,02,430	

4,58,02,430	7,26,54,917
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NOTE - 7.

SHORT TERM PROVISIONS:

- (i) For Employee Benefits
- (j) Others

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NOTE - 8.

OTHER NON-CURRENT ASSETS :

PRELIMINARY PREOPERATIVE EXPENSES:

- Opening Balance
- Less: Amortisation During the Year
- Closing Balance

14,70,160	35,54,077
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14,70,160	35,54,077
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NOTE - 10.

CASH AND CASH EQUIVALENT :

- (i) Cash on Hand
- (ii) Balances with scheduled Bank in Current Accounts

4,39,373	1,00,000
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1,79,899	4,171
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6,19,272	1,04,171
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NOTE - 11.

SHORT TERM LOANS AND ADVANCES :

(Unsecured considered good)

- (i) Loans and Advances to Related Parties
- (ii) Security Deposits
- (iii) Loans and Advances to Others
 - (i) Advance to Suppliers
 - (ii) Advance to Others
- (iv) Prepaid Expenses
- (v) Balances with Revenue Authorities

50,00,000	
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6,03,01,561	18,50,000
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59,507	
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6,53,61,068	18,50,000
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TRUE COPY

ADVOCATE

Vasundhara Seamless Stainless Tubes Private Limited

NOTE - 5.

TRADE PAYABLE :

- (a) Creditors for Goods
- (b) Creditors for Expenses

1,22,500	
<u>1,22,500</u>	

NOTE - 6.

OTHER CURRENT LIABILITIES :

- (a) Advance from Customers
- (b) Others Payables
- (c) T.D.S Payable

4,57,00,000	7,26,54,917
<u>1,02,430</u>	

<u>6,58,02,430</u>	<u>7,26,54,917</u>
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NOTE - 7.

SHORT TERM PROVISIONS:

- (i) For Employee Benefits
- (j) Others

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NOTE - 9.

OTHER NON-CURRENT ASSETS :

PRELIMINARY PREOPERATIVE EXPENSES:

- Opening Balance
- Less: Amortisation During the Year
- Closing Balance

14,70,160	35,54,077
<u>14,70,160</u>	<u>35,54,077</u>

NOTE - 10.

CASH AND CASH EQUIVALENT :

- (i) Cash on Hand
- (ii) Balances with scheduled Bank in Current Accounts

4,39,373	1,00,000
<u>1,79,899</u>	<u>4,171</u>
<u>6,19,272</u>	<u>1,04,171</u>

NOTE - 11.

SHORT TERM LOANS AND ADVANCES :

(Unsecured considered good)

- (i) Loans and Advances to Related Parties
- (ii) Security Deposits
- (iii) Loans and Advances to Others:
 - (1) Advance to Suppliers
 - (2) Advance to Others
- (iv) Prepaid Expenses
- (v) Balances with Revenue Authorities

50,00,000	
6,03,01,561	18,50,000
<u>59,507</u>	
<u>6,53,61,068</u>	<u>18,50,000</u>



TRUE COPY

ADVOCATE

We see clearly that Note 6 in the Balance sheet only gives the total amount of advance received from others. The details of the same are furnished in Schedule to the Note 6. None of these entries reflect any qualification by the Auditors, thereby acknowledging debt without any conditions. Exactly identical entries are available in Balance Sheet of previous financial years from 2019-20 onwards.

59. The entries under “Advance from Others – B.N. Enterprises” appearing in successive financial years clearly reflect the Corporate Debtor’s continuing acknowledgment of the amount. If, as claimed by the Appellant, this was merely an accounting entry maintained for tax compliance, it would ordinarily be accompanied by an auditor’s note or qualifying remark, which is conspicuously absent. The absence of such qualification evidences that the amount was indeed treated as a subsisting liability.

60. The contention that the transaction is “civil in nature” and hence outside the purview of IBC cannot be accepted. The IBC does not exclude commercial breaches from its ambit; what is relevant is the existence of a *debt* and *default*. The Code provides a summary remedy to operational creditors to recover undisputed debts. Once an advance is shown to have been paid and not returned, and there exists no plausible evidence of discharge, default stands established.

61. The letters exchanged between the parties, the consistent entries in the financial statements, and the admitted receipt of money together form a continuous chain demonstrating the existence of liability. The Corporate Debtor has not shown any contemporaneous correspondence repudiating

these claims prior to the demand notice under Section 8. The so-called “fabrication” theory was raised only after commencement of insolvency proceedings, and cannot detract from the otherwise consistent evidentiary record showing the debt and default.

62. Having considered the pleadings, documents, and the legal position, we are of the view that the Operational Creditor has satisfactorily established: (a) the payment of Rs.1 crore constituted advance consideration for supply of goods, (b) the goods were neither delivered nor the consideration refunded, and (c) the Corporate Debtor’s balance sheets and conduct confirm continuing acknowledgment of liability. Thus existence of “operational debt” and “default” as defined under Section 5(21) and Section 3(12) respectively of the Code have been clearly established.

63. We further note that the application is also not hit by limitation as there is clear acknowledgement of outstanding advance, in the last balance sheet of the CD for the year 2021-22, which has been placed on record. The acknowledgement in balance sheet of the CD as on 31.03.2022 has the effect of extending the limitation period upto 31.03.2025. The petition under Section 9 in this matter was filed on 23.06.2023 which was well within limitation.

64. In this regard we also note that the Hon’ble Supreme Court in *Asset Reconstruction Company (India) Ltd. v. Bishal Jaiswal*, (2021) 6 SCC 366, decisively held that an acknowledgment of liability in a company’s balance sheet constitutes acknowledgment under Section 18 of the Limitation Act, thereby restarting limitation. This principle was reaffirmed in *Dena Bank v. C. Shivakumar Reddy*, (2021) 10 SCC 330, where the Court observed that

acknowledgment in a balance sheet or in a one-time settlement proposal renews the period of limitation for the purpose of proceedings under the IBC.

65. Accordingly, we hold that the Adjudicating Authority rightly admitted the Section 9 application. As it was filed within the limitation period and the existence of operational debt and default, is found to be legally correct and based on sound appreciation of facts and law.

66. The second issue raised by the appellant relates to pre-existing disputes. Under the Code, a Corporate Debtor cannot be dragged into insolvency proceedings if there exists a *genuine and pre-existing dispute* between the parties regarding the debt claimed. Section 9(5)(ii)(d) of the Code specifically empowers the Adjudicating Authority to reject an application under Section 9 if it finds that the operational creditor's claim is covered by a pre-existing dispute.

67. In this case, the question for consideration is whether the alleged liability of Rs.1 crore, arising from the Sale Agreement dated 31.01.2019, was genuinely disputed by the Corporate Debtor *before* the issuance of the demand notice on 01.05.2023. The answer depends on examining whether the dispute claimed by the Corporate Debtor—regarding alleged fabrication of correspondence, denial of liability, or authenticity of signatures—was a bona fide and existing dispute prior to the statutory notice or merely a belated, afterthought defence raised to avoid insolvency.

68. The Appellant has contended that the NCLT erred in admitting the Section 9 application despite the existence of serious disputes. It is argued

that the Operational Creditor's claim is entirely based on fabricated letters dated 01.05.2019, 12.11.2019, 06.06.2022, and 23.03.2023, which purport to have been issued by the Operational Creditor and allegedly acknowledged by the Corporate Debtor. According to the Appellant, these documents were forged and bear fake seals and signatures of one "Darshan Palan," who, according to the Appellant, was neither an employee nor an authorized representative of the Corporate Debtor. The Appellant further asserts that no such letters were ever received by the Corporate Debtor and that the Operational Creditor concocted these documents much later to manufacture a record of alleged default.

69. It is the submission of the Appellant that a criminal complaint dated 20.07.2024 was filed before the police authorities, alleging forgery and fabrication of the said documents. This complaint, according to the Appellant, demonstrates that there was a serious and genuine dispute between the parties as to the very existence of liability. It is further submitted that the National E-Governance Services Limited (NeSL) information utility portal recorded the debt as "disputed," and this ought to have been treated as sufficient evidence of pre-existing dispute by the Adjudicating Authority.

70. The appellant also contended that the Adjudicating Authority failed to appreciate that the balance sheet entries showing the amount as "Advance from Others" did not amount to acknowledgment of liability, and that the entire dispute was of a purely civil nature arising out of breach of contract, which could not be the subject matter of insolvency proceedings under the

IBC. The Appellant thus maintains that the alleged debt was never admitted and that there existed a genuine dispute as to both facts and documents.

71. Per Contra, the Respondent 2/ Operational Creditor has categorically denied the Appellant's allegations of fabrication and fraud. It is his submission that no dispute of any kind was ever raised by the Corporate Debtor at any time prior to the demand notice dated 01.05.2023. The Respondent points out that all the letters relied upon were duly signed and acknowledged by the Corporate Debtor's authorized office with its official seal, and that those communications clearly established the ongoing default and repeated requests for refund of the Rs.1 crore advance.

72. It is the contention of the Respondent that the so-called "police complaint" dated 20.07.2024 was filed long after the Section 9 application had been admitted and reserved for orders, and therefore cannot qualify as a "pre-existing dispute." According to the Respondent, the complaint was lodged nearly five years after the transaction; more than a year after the demand notice; and only after the Corporate Debtor's right to file a reply had been closed by the NCLT on 23.04.2024. He emphasized that a dispute raised after the commencement of proceedings cannot be treated as a bona fide pre-existing dispute.

73. As regards the NeSL entry showing the debt as "disputed," the Respondent explains that this entry was unilaterally marked by the Corporate Debtor without any substantiating document, and therefore cannot override the consistent written record and acknowledgments of liability in the Corporate Debtor's financial statements. He also pointed out that the

Corporate Debtor repeatedly sought time to file its reply before the NCLT, but failed to do so within the stipulated period, which further indicates that there was no genuine dispute in existence prior to the proceedings.

74. In determining whether a dispute is “pre-existing,” we apply the test laid down by the Hon’ble Supreme Court in *Mobilox Innovations Pvt. Ltd. v. Kirusa Software Pvt. Ltd.* (2018) 1 SCC 353. In this case the Court held that the dispute must be (i) *plausible*, and (ii) must have *arisen before the receipt of the demand notice*. Mere assertion of a dispute or the filing of a complaint after the commencement of insolvency proceedings is insufficient to oust the jurisdiction of the Adjudicating Authority under Section 9 of the Code. The relevant paragraph 51 of the Mobilox Judgement is extracted below:

“51. 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)(i)(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.”

75. In the present case, we note that the demand notice under Section 8 was issued on 01.05.2023. The only document relied upon by the Appellant to show a dispute is a police complaint dated 20.07.2024—filed more than fourteen months later. There is not a single piece of evidence on record to suggest that the Corporate Debtor raised any objection to the authenticity of the letters, denied the liability, or communicated any disagreement regarding the Rs.1 crore transaction before that date. Even during the entire period between 2019 and 2023, there is no correspondence from the Corporate Debtor questioning the Operational Creditor's repeated communications or denying its obligation to refund.

76. On the contrary, the record shows that the letters from the Operational Creditor dated 01.05.2019, 12.11.2019, 06.06.2022, and 23.03.2023 were duly received and acknowledged with the official stamp of the Corporate Debtor. These letters form a consistent chain of correspondence showing that the Operational Creditor repeatedly demanded either delivery of scrap or refund of the amount, and the Corporate Debtor never repudiated these claims. If, as alleged, these letters were fabricated, it is not explained why no immediate protest or action was taken. It is highly improbable that the Corporate Debtor would remain silent for more than four years and suddenly, after the case was reserved for orders, come forward to claim forgery.

77. It is also important to note that these letters were received by the Corporate Debtor prior to the Appellant assuming directorship of the company. Furthermore, the last letter dated 23.03.2023 reflects the updated address of the Corporate Debtor, So, the respondent cannot claim that the

letter has been sent to the old address. The entire chain of correspondence, in fact shows the sincerity and diligence of the OC in pursuing his refund from the CD.

78. The belated police complaint filed on 20.07.2024 appears to be an afterthought. Its timing, after the case was reserved for judgment, clearly indicates that it was filed to create a semblance of dispute when none existed earlier. Courts have consistently held that a dispute fabricated after issuance of demand notice or after filing of the Section 9 petition does not qualify as a “pre-existing dispute.” The ratio in *Mobilox (supra)* and subsequent decisions such as *Kay Bouvet Engineering Ltd. v. Overseas Infrastructure Alliance (India) Pvt. Ltd.* (2021) SCC OnLine SC 1349 reinforce this principle.

79. The contention regarding the NeSL portal is also not convincing. The Code does not treat the NeSL information as determinative of the existence of a dispute. The mere marking of a debt as “disputed” on the portal, without supporting evidence, cannot override the underlying contractual documents and financial records. Moreover, the Corporate Debtor’s audited financial statements for FY 2020–21 and 2021–22 continue to reflect the amount of Rs.1 crore under the head “Advance from Others – B.N. Enterprises,” without any qualification or disclaimer. These audited statements, prepared and signed under statutory obligation, are reliable indicators that the Corporate Debtor treated the amount as an outstanding liability, not as a disputed claim.

80. It is also pertinent that the Corporate Debtor failed to file its reply before the NCLT despite repeated opportunities and only attempted to do so belatedly

on 01.08.2024, after its right had been closed on 23.04.2024. This pattern of conduct reinforces the inference that the dispute now alleged was not a genuine one, but raised as an afterthought to resist insolvency proceedings.

81. We find that the Appellant has failed to establish the existence of any bona fide, pre-existing dispute. The allegations of forgery and fabrication are wholly unsubstantiated, raised belatedly, and evidently designed to frustrate the insolvency process. The police complaint lodged after the conclusion of hearing is not contemporaneous evidence of dispute, but an afterthought. The balance sheets, correspondence, and unrefuted demands of the Operational Creditor all point to the existence of an undisputed debt and default.

82. We are of the view that the Adjudicating Authority correctly applied the *Mobilox* test and rightly concluded that the defence set up by the Corporate Debtor was moonshine defence and not supported by any pre-existing dispute. There was no credible dispute that could bar the admission of the Section 9 petition.

83. In view of above findings, we find no infirmity in the order of the Adjudicating Authority admitting the application under Section 9 of the Code. The appeal is dismissed. Pending IAs, if any, are closed. No order as to costs.

[Justice Yogesh Khanna]
Member (Judicial)

[Mr. Indevar Pandey]
Member (Technical)

SA/Pragya (LRA)