IN THE NATIONAL COMPANY LAW TRIBUNAL, DIVISION BENCH – II, CHENNAI
IBA/1297(CHE)/2019

(Filed under Section 9 of the Insolvency and Bankruptcy Code, 2016, R/w, Rule 6 of the Insolvency and Bankruptcy Rules, 2016)

In the matter of ***Viprah Technologies Limited***

ARUL PRASAD SENNIAPPAN,
13-v-68, Rengas Triyambhava Kalappatti
Road, Coimbatore – 641 014.

… Petitioner/ Operational Creditor

V/s

VIPRAH TECHNOLOGIES LIMITED,
S.F.No. 79, Alampalayam Road, Thakkalur,
Avinashi Taluk, Coimbatore – 641 654, Tamil Nadu.

… Respondent/ Corporate Debtor

Order pronounced on 10.10.2025

CORAM:

***Shri.* JYOTI KUMAR TRIPATHI, MEMBER (JUDICIAL)**

***Shri.* RAVICHANDRAN RAMASAMY, MEMBER (TECHNICAL)**

Present:
For Applicant: Mr. P.J. Sri Ganesh, Mr. P.J. Rishikesh & Mr.Agil Vatchalam, Advocates
For Respondent: Mr. Pawan Jhabakh, Mr. Manivannan J & Mr. Antony R Julian, Advocates

O R D E R

(Heard through Hybrid Mode)

This Application under Section 9 the Insolvency and Bankruptcy Code, 2016 read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 has been filed by **Arul**

Prasad Senniappan, Petitioner/ Operational Creditor herein against **M/s. Viprah Technologies Limited**, Respondent / Corporate Debtor herein for initiating Corporate Insolvency Process (CIRP) against the Corporate Debtor.

2. SUBMISSIONS OF THE APPLICANT

2.1. Part I of the Application contains the particulars of the Applicant Arul Prasad Senniappan. Part II of the Application sets out the details of the Corporate Debtor. It was incorporated on 06.10.1986 with paid up share capital of Rs. 7,20,00,000/- and address at S.F.No.79, Alampalayam Road, Thakkalur, Avinashi Taluk, Coimbatore – 641 654, Tamil Nadu, within the jurisdiction of this Tribunal. In Part III of the application, the Operational Creditor has proposed CA S. Prabhu as the IRP. Part IV of the application sets out the details of the debt being Rs.10,50,000/- (Rupees ten lakh fifty thousand only) on account of the services rendered as the Whole Time Director of the Respondent / Corporate Debtor and work undertaken with date of default as 01.04.2017. This application has been filed on 17.10.2019.

2.2. The Applicant submits that he was appointed as Director (Operations) of the Corporate Debtor by virtue of a Director Employment

Agreement executed on 01.08.2015, to manage and oversee the business and operational activities of the Corporate Debtor. Under the said agreement, the Applicant was entitled to a remuneration of Rs.70,000/- (Rupees Seventy Thousand only) per month, together with such allowances and perquisites as were customarily applicable to similar positions.

2.3. It is further stated that the Applicant discharged his duties as Director (Operations) during the period from 01.01.2016 to 31.03.2017, for which a total remuneration of Rs.10,50,000/- (Rupees Ten Lakhs Fifty Thousand only) became due and payable by the Corporate Debtor. The said amount constitutes an operational debt within the meaning of Section 5(21) of the Code.

2.4. The Applicant submits that despite repeated reminders and assurances, the Corporate Debtor failed to release the above dues. It is further submitted that the Corporate Debtor has, from time to time, admitted and acknowledged its liability towards the Applicant. The last such acknowledgment and promise to pay is stated to be recorded in the Minutes of Meeting dated 15.12.2018, wherein the Corporate Debtor categorically admitted the amount of Rs. 10.50 lakhs as outstanding.

2.5. The Applicant has therefore contended that the date of default commenced on 01.04.2017, and that the amount remains unpaid till date, thereby rendering the Corporate Debtor liable to proceedings under Section 9 of the Code.

2.6. In compliance with the mandatory requirements under Section 8(1) of the Code, the Applicant issued a Demand Notice in Form 3 dated 16.09.2019, demanding payment of the outstanding amount of Rs. 10.50 lakhs. The said notice was duly served upon the Corporate Debtor at its registered office address. However, no reply raising any dispute, nor any payment, was received from the Corporate Debtor within the statutory period of ten (10) days.

2.7. It is submitted that there exists no pre-existing dispute in respect of the said operational debt, nor has any suit, arbitration, or other proceeding been initiated by or against the Applicant concerning the same. It is further submitted that the default on the part of the Corporate Debtor is clear and undisputed, and hence, the present petition is maintainable under Section 9 of the Code.

2.8. The Applicant has proposed the appointment of CA S. Prabhu (Registration No. IBBI/IPA-001/IP-P01275/2018-2019/11948), as the Interim

Resolution Professional (IRP) to conduct the CIRP in the event this Hon'ble Tribunal admits the petition.

3. SUBMISSIONS OF THE RESPONDENT/ CORPORATE DEBTOR

3.1. The Respondent, M/s Viprah Technologies Limited, at the outset denies all the averments, allegations and claims made in the petition and asserts that no amount whatsoever is due or payable to the Applicant/Operational Creditor. It is submitted that the present proceedings are a mala fide and coercive attempt by the Applicant to extract monies that are not legally due, and hence, the petition constitutes an abuse of process of law deserving outright dismissal.

3.2. It is contended that the claim is barred by limitation. The Respondent points out that under the Director Employment Agreement (DEA) dated 01.08.2015, any remuneration payable to the Applicant accrued month-to-month, beginning from January 2016. Therefore, the first alleged default would have arisen on 01 May 2016 (for the April 2016 salary) and not on 01 April 2017 as falsely pleaded by the Applicant. The present petition, filed only in October 2019, is thus beyond the three-year limitation period and hence not maintainable.

3.3. It is further submitted that the Applicant deliberately misrepresented the date of default to bring the claim within limitation, even though the cause of action arose much earlier. It is further submitted that by virtue of Section 238A of the IBC, the provisions of the Limitation Act 1963 apply to insolvency proceedings, and consequently, the alleged operational debt stands time-barred in law.

3.4. It is also submitted that there is no liability or outstanding payment towards the Applicant. The Applicant's narrative, according to the Respondent, is incomplete and misleading as it conceals crucial facts, particularly the existence and effect of the Non-Disclosure, Non-Circumvention and Non-Compete Agreement (NDNCA) dated 02.07.2015, executed between the same parties.

3.5. The Respondent states that under the DEA and the NDNCA, the Applicant was inducted as Director (Operations) on the understanding that he would strive to enhance the Company's business by bringing in funds, clients, and technology, and that he would uphold the highest standards of fiduciary and ethical conduct. Contrary to these expectations, the Applicant allegedly displayed consistent non-performance and neglect of his obligations. He absented himself from important board meetings,

failed to raise or secure any funding, and did not contribute to the Company's growth.

3.6. It is further averred that the Applicant had founded and operated another concern, Quadruple Consulting, during the subsistence of his directorship with the Respondent, thereby engaging in competing activities and utilizing the Respondent's confidential information, client data and technical know-how for personal gain. Such conduct, according to the Respondent, is a clear violation of the confidentiality and non-compete clauses contained in both the DEA and the NDNCA.

3.7. The Respondent also asserts that the Applicant simultaneously held the position of Director of Operations in the Wittur Group, without obtaining prior approval from the Respondent's Board, which again amounts to a breach of fiduciary duty and contravention of corporate governance norms.

3.8. It is submitted that the Applicant's actions were clandestine and unethical, and that he deliberately shared proprietary information of the Respondent with competitors, thereby causing irreparable harm to the Company's reputation, business prospects and stakeholder interests.

3.9. The Respondent claims to have made several attempts to contact the Applicant and to restrict further damage. Numerous e-mails were sent on 28 December 2017, 7 September 2018 and 17 September 2018, demanding explanations and compliance with governance norms. Copies of these e-mails are filed as Annexure A2 to the Counter. The Applicant allegedly ignored all such communications and failed to participate in board meetings despite repeated notices.

3.10. The Respondent relies upon the NDNCA dated 02.07.2015 (filed as Annexure A1) and the above e-mails to demonstrate that a serious and bona-fide pre-existing dispute exists between the parties long prior to the issuance of the statutory demand notice under Section 8 of the IBC.

3.11. In view of the Applicant's alleged non-performance, professional misconduct, and violation of the DEA and NDNCA, the Respondent contends that the Applicant is not entitled to claim any salary or operational dues, since he never performed the duties for which remuneration was agreed. Rather, the Respondent states that the Applicant's conduct has caused tangible and intangible losses to the Company, warranting independent legal and criminal action against him.

3.12. The Respondent therefore submits that there exists a clear pre-existing dispute between the parties as to the Applicant's performance, contractual breaches and entitlement to any remuneration. Hence, the proceedings under Section 9 of the IBC are not maintainable, as the same cannot be invoked for recovery of disputed claims or for enforcement of employment-related obligations.

3.13. On these grounds, the Respondent prays that the petition be dismissed in limine as:

i. barred by limitation;

ii. unsupported by any legally enforceable debt; and

iii. arising out of a genuine and substantial pre-existing dispute between the parties.

4. *SUBMISSIONS OF THE RESPONDENT/ CORPORATE DEBTOR (Additional counter)*

4.1. The Respondent submits that this Hon'ble Tribunal had earlier dismissed the present Section 9 application on 30.04.2021, holding that the Applicant failed to substantiate the debt and default. It was observed that several meetings had taken place between the parties for amicable settlement, and the Applicant had not established absence of pre-existing

disputes. However, the Hon'ble NCLAT, vide judgment dated 18.10.2022 in Comp. App (AT) (CH) (Ins) No. 185 of 2021, set aside the NCLT's order only to the extent that it wrongly recorded that no counter was filed, and remanded the matter for reconsideration. The Respondent emphasizes that the NCLAT did not disturb the earlier findings that the Applicant had failed to substantiate his claim.

4.2. The Respondent contends that the present application has been filed with mala fide intent, to harass the Corporate Debtor and cover up the Applicant's own breaches of fiduciary duties committed during his tenure as Whole-Time Director. It is alleged that the Applicant has filed the case only to extort money and to give legal cover to his own violations.

4.3. The Respondent reiterates that the claim of Rs.10.50 lakhs for salary arrears from January 2016 to March 2017 is not a legally recoverable debt and, in any event, a substantial portion (Rs.6.30 lakhs for Jan–Sept 2016) is barred by limitation, relying on ***Sakal Deep Sahai Srivastava v. Union of India (1974) 1 SCC 338***, and ***Omega Laser Products B.V. v. Anil Agrawal, 2022 SCC OnLine NCLAT 294***.

4.4. The Respondent relies heavily on the Non-Disclosure, Non-Circumvention, and Non-Compete (NDNC) Agreement dated 02.07.2015,

the Board of Directors Services Agreement dated 01.08.2015, and the Director Employment Agreement dated 01.08.2015, to submit that the Applicant's appointment was conditional upon these contracts. The Applicant, it is alleged, suppressed the NDNC and Board Services Agreements in his petition.

4.5. The Respondent asserts that under the NDNC Agreement, the Applicant had agreed to invest in the company and not use confidential information or compete with the Corporate Debtor's business. However, the Applicant is alleged to have breached these obligations by operating a parallel concern, Quadruple Consulting, during his tenure as Director and by using the Corporate Debtor's proprietary know-how and client contacts for personal benefit.

4.6. It is further alleged that the Applicant also worked simultaneously as Director of Operations with the Wittur Group, violating the full-time director requirement under the Companies Act, 2013, and that such conduct amounted to breach of Section 166 of the Companies Act concerning fiduciary duties of directors.

4.7. The Respondent reiterates that during the demonetisation period, the Applicant deposited Rs.50 lakhs in cash into the Corporate Debtor's

account, leading to Income Tax proceedings and penalties against the Company, as shown in the Assessment Order dated 30.10.2019.

4.8. Referring to a series of emails dated 28.12.2017, 07.09.2018, 19.09.2018, and a letter dated 11.12.2018, the Respondent submits that there were continuous correspondences and disputes regarding the Applicant's conduct prior to the demand notice, which clearly show that a pre-existing dispute existed long before the filing of the Section 9 petition.

4.9. The Respondent argues that the Minutes of Meeting dated 15.12.2018, relied upon by the Applicant, were merely informal discussions, not a Board-approved resolution, and hence cannot be treated as acknowledgment of debt.

4.10. The Respondent states that following the 2018 meeting, it issued a Final Show Cause Notice dated 14.09.2019 proposing removal of the Applicant as Director and seeking recovery of losses caused by him. The Applicant's Section 8 demand notice dated 16.09.2019 was issued only to pre-empt and counteract these disciplinary proceedings. The Applicant was subsequently removed on 30.09.2019.

4.11. It is also alleged that the present petition is fraudulent and collusive, filed in connivance with M/s Actioncor Consultants Private Limited, which

earlier filed a Section 7 application (CP/946/IB/2018) against the same Corporate Debtor. That application was dismissed by the Hon'ble NCLT on 18.07.2019, and the dismissal was upheld by NCLAT and the Supreme Court.

4.12. The Respondent has now produced a Notice of Hearing dated 28.03.2024 issued by the Principal District Judge, Tirupur, to show that the Applicant herein is the authorised signatory of M/s Actioncor Consultants Private Limited in a pending civil suit (C.O.S No. 10 of 2024), suggesting that both proceedings are collusive and intended to force the company into CIRP.

4.13. The Respondent submits that the Applicant's conduct demonstrates fraudulent and malicious intent, attracting the bar under Section 65 of the IBC, and that this Tribunal should dismiss the application with exemplary costs to prevent misuse of the Code.

4.14. It is further contended that the Corporate Debtor is a financially sound MSME, which earned a net profit of Rs.50 lakhs for FY 2022–23 and has not defaulted on any loan or interest payments. Hence, initiation of CIRP is unwarranted and contrary to the objectives of the IBC.

4.15. Finally, relying on ***Swiss Ribbons Private Limited v. Union of India (2019) 4 SCC 17*** and ***Hytone Merchants Private Limited v. Satabadi Investments Consultants Private Limited (NCLAT 2021)***, the Respondent asserts that the Adjudicating Authority must exercise discretion to prevent CIRP being initiated mala fide and to safeguard solvent companies from abuse of process.

5. *SUBMISSIONS OF THE APPLICANT IN REJOINDER*

5.1. The Applicant, at the outset, denies all the allegations contained in the Respondent's counter statement except those specifically admitted. It is submitted that the contents of the counter are false, baseless, and misleading, and the Respondent is put to strict proof of the same.

5.2. The Applicant points out that the Hon'ble NCLAT, by its order dated 30.04.2021, has set aside the earlier dismissal order and remanded the matter for fresh adjudication. This, according to the Applicant, is clearly borne out from paragraph 9 of the said NCLAT order. Therefore, any assertion by the Respondent to the contrary is false and contrary to record.

5.3. The Applicant strongly denies the allegations made by the Respondent that the present petition has been filed with mala fide intention or to extort money. It is submitted that the petition was filed only

to recover legitimate operational dues for services rendered, which the Corporate Debtor has admitted in writing. Further, such allegations of mala fides or harassment were never raised in the Respondent's earlier filings and have been introduced for the first time during December 2024 merely to create a false defence.

5.4. The Applicant categorically denies the plea that the claim is barred by limitation. It is submitted that the Corporate Debtor has acknowledged the debt on multiple occasions, including in the Minutes of Meeting dated 15.12.2018, which clearly records the dues owed to the Applicant. By virtue of such acknowledgment, the limitation period stands extended, and hence, the plea of limitation raised by the Respondent is untenable in law.

5.5. The Applicant denies the allegations made in paragraphs 8 to 12 of the counter and asserts that there was no pre-existing dispute prior to the filing of the petition. Although the parties had entered into certain agreements—namely, the Director Employment Agreement and Non-Disclosure/Non-Compete Agreement—the Respondent never alleged any breach or misconduct until after the filing of the present proceedings. Thus, the claim of a pre-existing dispute is an afterthought.

5.6. The Applicant specifically denies operating any competing business under the name Quadruple Consulting. It is explained that Kriyatech, a partnership firm started by the Applicant's father, uses the brand name "Quadruple Consulting" and provides business management consultancy services. The Applicant neither founded nor operated this firm. Moreover, Kriyatech had been functioning since 20.01.2015, well before the Applicant's engagement with the Respondent.

5.7. The Applicant further submits that there is no similarity or competition between the Respondent's business, manufacturing of acoustic enclosures, panels and gensets and Kriyatech's consultancy services. In fact, the Respondent was itself a client of Kriyatech and had made three payments dated 09.09.2016, 18.10.2016, and 07.11.2016, which are evidenced by bank statements annexed to the rejoinder. The Minutes of Meeting dated 15.12.2018 also record dues owed to Kriyatech, thereby disproving the Respondent's allegation of competition or misconduct.

5.8. The Applicant denies the allegation that he used the Respondent's confidential know-how or proprietary data. It is pointed out that the Respondent has failed to specify or identify any such "confidential know-how" or demonstrate ownership of any intellectual property rights in that

regard. These allegations have been invented after nine years merely to obstruct legitimate recovery.

5.9. The Applicant clarifies that his association with the Wittur Group was only as a consultant through Kriyatech and for the period 2017–2019, i.e., after his tenure with the Respondent had ended. Therefore, the allegation that this engagement amounted to a breach of fiduciary duty or conflict of interest is factually and legally unfounded.

5.10. The Applicant denies the allegation that he deposited Rs.50,00,000/- in cash into the Corporate Debtor's account during demonetisation. It is submitted that any proceedings initiated by the Income Tax Department are independent of these insolvency proceedings and cannot be used as a defence. The assessment order dated 13.10.2019 speaks for itself and does not attribute any wrongdoing to the Applicant.

5.11. The Applicant submits that several e-mails exchanged between December 2018 and early 2019 have been produced, which contradict the Respondent's claim that he did not respond to queries. The Applicant contends that the Minutes of Meeting dated 15.12.2018 was a formal and valid record attended even by the Respondent's Advisor, and it categorically acknowledges the liability towards the Applicant. The

Respondent's attempt to treat this meeting as an "informal discussion" is false and afterthought.

5.12. The Applicant contends that the notice dated 14.09.2019 produced by the Respondent is forged and fabricated, as it is neither accompanied by a postal receipt nor acknowledgment of delivery, nor was it sent via e-mail. The document was allegedly created solely for defending the present case and hence cannot be relied upon.

5.13. The Applicant submits that references made in the counter regarding other creditors or their petitions are irrelevant to the present case. The Respondent, according to the Applicant, is a habitual defaulter who has failed to file its statutory returns for the last two years, and therefore, the argument of a possible hostile takeover is illusory and baseless.

5.14. The Applicant reiterates that the debt and default have been clearly admitted by the Respondent in its own records, including minutes, resolutions, and correspondences. Hence, the existence of default stands conclusively established, and there is no dispute warranting rejection of the petition.

6. WRITTEN SUBMISSIONS OF THE APPLICANT

6.1. The Applicant in the written submission filed has reiterated all the contentions averred in the petition and rejoinder.

6.2. The Respondent's defence of limitation was denied as baseless, as the debt was acknowledged in the Annual Returns and minutes of the 2018 meeting, constituting a fresh acknowledgment under law. The allegations of breach of fiduciary duty and violation of non-compete or non-disclosure agreements were stated to be false and raised only after issuance of the demand notice. It was argued that the claim of conflict of interest was an afterthought, as the Form DIR-12 showing the Applicant's removal was filed after issuance of the demand notice. The documents relied on by the Respondent, special notices and AGM notices were alleged to be fabricated, unsigned, and without proof of service.

6.3. The Applicant contended that the Respondent has attempted to improve its defence belatedly by filing additional forged documents after pleadings were closed. It was further submitted that the Respondent has a history of financial and legal defaults, including attachment of properties by courts, unpaid labour dues, and criminal proceedings against its Managing Director. Hence, the Applicant prayed that the petition be admitted and Corporate Insolvency Resolution Process (CIRP) be initiated

against the Corporate Debtor, as the liability is clearly admitted through multiple acknowledgments.

7. WRITTEN SUBMISSIONS OF THE RESPONDENT

7.1. The Respondent/ Corporate Debtor in the written submission filed has reiterated all the averments as in the counter.

7.2. The Respondent submits that the demand notice under Section 8 of the IBC was issued by the Applicant on 16.09.2019, when he was still serving as the Whole-Time Director of the Company, and his cessation from directorship took effect only on 30.09.2019. Issuing a demand notice while continuing as director amounts to a direct conflict of interest and a violation of fiduciary duties under Section 166(4) of the Companies Act, 2013. Relying on the Supreme Court judgment in ***M.K. Rajagopalan v. Periasamy Palani Gounder (2024) 1 SCC 42***, it is argued that the Applicant's action constitutes a breach of statutory duty and renders the entire proceeding bad in law.

7.3. The Respondent contends that the minutes of the meeting dated 15.12.2018 relied upon by the Applicant cannot be treated as an acknowledgment of liability, as they were informal discussions and not board-approved resolutions. ***Citing Omega Laser Products B.V. v. Anil***

Agrawal, 2022 SCC OnLine NCLAT 294, it is argued that such informal minutes cannot establish operational debt and, on the contrary, reflect a pre-existing dispute.

7.4. The Respondent further contends that the claim for salary arrears from January 2016 to March 2017 is partly barred by limitation, as the portion from January 2016 to September 2016 falls outside the three-year limitation period under the Limitation Act, 1963.

7.5. It is also alleged that the present petition is a collusive and fraudulent attempt, filed in coordination with M/s Actioncor Consultants Pvt Ltd, whose Section 7 application against the Respondent (CP/946/IB/2018) had earlier been dismissed by the NCLT, and whose appeal was rejected up to the Supreme Court. The same counsel represents both the entities, and the Applicant is shown to be an authorised signatory of Actioncor Consultants in civil proceedings, evidencing collusion to relitigate an already rejected claim and to misuse the IBC framework for ulterior motives.

7.6. Relying on ***Mobilox Innovations (P) Ltd. v. Kirusa Software (P) Ltd., (2018) 1 SCC 353***, the Respondent argues that the IBC cannot be invoked for debt recovery where pre-existing disputes exist. The

Respondent therefore prays for dismissal of the application as not maintainable, contending that it is a fraudulent proceeding attracting Section 65 of IBC, and seeks exemplary costs and action against the Applicant for abuse of process.

8. *FINDINGS OF THE TRIBUNAL*

8.1. We have carefully heard the submissions advanced by the Learned Counsel for both sides and perused the pleadings, documents, and written submissions filed on record. The primary issue that arises for consideration before this Tribunal is whether the present petition filed under Section 9 of the Insolvency and Bankruptcy Code, 2016 ("IBC") is maintainable and whether the operational debt claimed by the Applicant is established beyond reasonable doubt so as to warrant initiation of Corporate Insolvency Resolution Process (CIRP) against the Respondent–Corporate Debtor.

8.2. Before adverting to the merits, it is necessary to consider whether the statutory threshold prescribed under Section 4 of the IBC is satisfied in the present case. The petition has been filed on 17.10.2019, which is prior to the notification dated 24.03.2020 enhancing the minimum default limit to Rs. 1 crore. Hence, the earlier threshold of Rs. 1 lakh is applicable to this

proceeding. The reason behind it is that since the matter has been remanded back after setting aside the order dated 30.04.2021 passed by this adjudicating authority it will be treated as filing of this application. The amount claimed by the Operational Creditor is Rs. 10.50 lakhs, representing unpaid salary dues, which is well above the then-prescribed minimum. Accordingly, this Tribunal holds that the monetary threshold for initiation under Section 9 stands duly satisfied.

8.3. It has been consistently held by the Hon'ble NCLAT in several cases such as ***Madhusudan Tantia v. Amit Choraria (Company Appeal (AT) (Ins) No. 557 of 2020, decided on 05.01.2021)*** that the amended threshold of Rs. 1 crore is prospective and does not apply to petitions filed before 24 March 2020. Therefore, for petitions filed prior to that date, the then-prevailing threshold of Rs. 1 lakh under Section 4 IBC applies. The claimed operational debt is Rs. 10.50 lakhs, which is far above the Rs. 1 lakh threshold applicable to filings made before 24 March 2020.

8.4. At the outset, it is not in dispute that the Applicant had been appointed as Director (Operations) of the Respondent–Company pursuant to a Director Employment Agreement dated 01.08.2015, and the same was duly approved by the Board Resolution dated 25.09.2015. The

remuneration fixed under the said agreement was Rs.70,000 per month, and it is admitted that the Applicant rendered services at least till 31.03.2017.

8.5. The Applicant has claimed that the Respondent defaulted in payment of the aggregate salary dues of Rs.10.50 lakhs for the period from 01.01.2016 to 31.03.2017. In support thereof, the Applicant has produced the Minutes of Meeting dated 15.12.2018, which, according to him, records a clear acknowledgment of the outstanding dues by the Managing Director of the Corporate Debtor. The Respondent has, however, sought to describe the said meeting as an informal discussion without any legal effect.

8.6. Upon perusal of the said Minutes, we find that the Respondent's representative has in fact recorded that "salary dues payable to Mr. Arul Prasad" were pending and required settlement. Though it may not be a Board resolution per se, the document has been signed by the Respondent's authorised signatory, and its genuineness has not been disputed at the relevant time. This, coupled with the fact that the Respondent's Annual Returns for FY 2016–17 and 2017–18 also reflect salary payable to the Applicant, leads to a clear inference that the liability

has been acknowledged in writing within the meaning of Section 18 of the Limitation Act, 1963.

8.7. The Respondent's primary case is that there existed a pre-existing dispute that the Applicant committed breaches (NDNC / competing business / holding position with Wittur / depositing cash during demonetisation / other misconduct) — and therefore the petition is not maintainable. The legal test is well known: where a bona fide dispute exists prior to receipt of the demand notice, the IBC remedy cannot be used as a debt recovery tool ***(Mobilox Innovations v. Kirusa, (2018) 1 SCC 353)***. The Court must examine whether the dispute was genuine and pre-existing.

8.8. The Respondent has produced emails (28.12.2017; 07.09.2018; 19.09.2018) complaining about the Applicant's conduct and requesting documents; it also produced a Final Show Cause Notice dated 14.09.2019 (intimating removal and damages) and the Assessment Order dated 30.10.2019 (Income Tax proceedings). These documents demonstrate that the Respondent had concerns about the Applicant's conduct. But two critical points must be emphasised:

(a) Nature of the dispute: the emails and internal correspondence largely raise concerns about alleged misconduct, corporate governance and

KYC non-compliance — they do not, by themselves, form a clear and contemporaneous denial of the existence of salary dues that the Applicant claims; indeed the Minutes of 15.12.2018 (earlier than the Final Show Cause Notice and earlier than the demand notice) record that salary dues were acknowledged and that validation/settlement would be completed. There is thus an internal inconsistency between the Respondent's contemporaneous management entries and their later pleaded defence.

(b) Timing and sequence: the demand notice (Form-3) was dated 16.09.2019. The Respondent's Final Show Cause Notice was issued on 14.09.2019, two days earlier but the substance of the alleged misconduct complaints (emails, repeated requests for documents) predates the show cause. The Tribunal must therefore decide whether those complaints amounted to a bona fide dispute about the existence/quantum of the debt, or merely allegations of misconduct (which the Respondent says justify withholding remuneration). The preponderance of evidence (minutes, annual returns, absence of formal recovery/ forfeiture or damage proceedings commenced prior to the demand) shows that although there were governance concerns, the Corporate Debtor had concurrently admitted the existence of salary dues on record. An

allegation of misconduct, without contemporaneous initiation of formal action to recover damages/ forfeiture or a specific written repudiation of the salary claim prior to the demand, does not amount to a bona fide pre-existing dispute that will defeat an otherwise established claim.

8.9. In short, the Respondent's factual complaints are grievances not a clear denial of the salary debt. They were not pressed by the Respondent before the demand notice in a manner that demonstrates a bona fide dispute as to the debt /quantum. Therefore, the ***Mobilox test*** is not satisfied.

8.10. The Respondent contends part of the claim (Jan–Sept 2016) is time-barred relying on the line of authority beginning with ***Sakal Deep Sahai Srivastava*** and subsequent decisions. It is, however, well settled that an acknowledgement in writing by the debtor, made before the expiry of the limitation period, restarts the limitation period as contemplated by Section 18 of the Limitation Act. The Minutes of 15.12.2018 constitute such an acknowledgment in writing. Consequently, the petition filed on 17.10.2019 falls within the limitation period and the plea of partial bar on limitation fails.

8.11. The Respondent's plea that a portion of the claim is barred by limitation cannot, therefore, be sustained. Even assuming that the original cause of action arose in March 2017, the acknowledgment dated 15.12.2018 effectively extended the limitation period, bringing the petition filed on 17.10.2019 within time.

8.12. As regards the contention that the Applicant issued the statutory demand notice while continuing as Whole-Time Director of the Company, this Tribunal notes that the Form DIR-12 reflecting his cessation was filed on 30.09.2019, whereas the demand notice under Section 8 was issued on 16.09.2019. It is settled that an operational creditor can also be an employee or director if a legally enforceable debt exists. There is no express bar under the IBC prohibiting a director from issuing a notice for unpaid remuneration that qualifies as "operational debt" under Section 5(21). The fiduciary obligations under Section 166(4) of the Companies Act, 2013, cannot override a statutory remedy available under the IBC in respect of unpaid dues, particularly when the employment relationship has effectively ceased.

8.13. The Respondent's reliance on the decision in ***M.K. Rajagopalan v. Periasamy Palani Gounder (2024) 1 SCC 42***, is misplaced. That judgment

dealt with violation of fiduciary duties in a case of ongoing management, whereas in the present case, the relationship of employer and employee had already come to an end, and what is sought is only recovery of admitted operational dues. The Tribunal notes that being a director does not ipso facto bar a director from claiming a legally enforceable debt (salary) that had accrued to him. Further, the law under the IBC does not provide that a director's initiation of a Section 9 demand is per se invalid; the test remains whether the claim is real, undisputed and within limitation. Alleged conflict of interest is an argument of weight where a director uses his position to cause harm or to fabricate claims; but here the documents show admission of debt by the Respondent on record prior to the demand. On that basis, the fiduciary-duty argument does not defeat the Applicant's case.

8.14. The Respondent's attempt to characterise the petition as a malicious and collusive proceeding in coordination with another creditor M/s Actioncor Consultants Private Limited, is unsupported by any documentary evidence. To attract Section 65 (penalty for initiating proceedings fraudulently/ mala fide), the Respondent must establish clear and cogent evidence of malicious intent or a designed scheme to abuse the IBC. Mere coincidence of representation, or that the same counsel

appeared for different parties, or that the Applicant acted as authorised signatory in unrelated proceedings, does not meet the high threshold required to invoke Section 65. No cogent evidence has been placed before us to show that the Section 9 petition was instituted as part of a fraudulent conspiracy and therefore Section 65 is not attracted on the present material.

8.15. The Respondent has also alleged that the Applicant violated the Non-Disclosure and Non-Compete Agreement and ran a competing concern under the name Quadruple Consulting. However, on examination of the rejoinder and the documents annexed thereto, it is evident that Quadruple Consulting is a brand operated by Kriyatech, a partnership firm belonging to the Applicant's father, which has been in existence even prior to the Applicant's tenure with the Respondent. The bank statements produced in the rejoinder further reveal that the Respondent itself had made payments to Kriyatech for consultancy services during 2016, which undermines the allegation of conflict of interest or competition.

8.16. It is noted that a contractual or fiduciary breach may give rise to a separate claim for damages but the Respondent has not shown that any formal, contemporaneous, actionable claim e.g., suit for damages, set-off resolution by the Board, criminal complaint, or resolution to forfeit

remuneration, was instituted before 16.09.2019 which would amount to a bona fide dispute as to the existence or quantum of the debt. Absent such contemporaneous action, these remain after-the-fact defences.

8.17. The Respondent's claim that the Applicant misused confidential information or deposited unaccounted cash during demonetisation also lacks any substantiation. No contemporaneous complaint, board resolution, or inquiry report has been placed before this Tribunal to establish such alleged misconduct. These allegations appear to have been raised only after the issuance of the Section 8 notice, and therefore cannot qualify as a "pre-existing dispute" within the meaning of the test laid down by the Hon'ble Supreme Court in ***Mobilox Innovations (P) Ltd. v. Kirusa Software (P) Ltd., (2018) 1 SCC 353.***

8.18. This Tribunal also notes that the Respondent has not denied the existence of the employment relationship, nor has it produced any evidence showing that the Applicant was paid his salary for the period claimed. There is also no record of any pending civil or criminal proceeding initiated by the Respondent alleging breach of fiduciary duty or misappropriation prior to the issuance of the statutory demand notice.

The absence of such contemporaneous action strongly militates against the plea of pre-existing dispute.

8.19. The plea that the minutes dated 15.12.2018 are informal and hence unenforceable is also devoid of merit. Even informal written communication acknowledging liability constitutes valid acknowledgment under law. The said minutes, read along with annual returns and the Applicant's employment agreement, collectively establish the existence of a clear operational debt and default in payment.

8.20. The Tribunal is conscious that the IBC is not a forum for recovery of disputed claims, but once the debt and default are established and there is no genuine dispute prior to the issuance of demand notice, the statutory mandate under Section 9(5) requires admission of the application. The Respondent's defences appear to be afterthoughts raised belatedly with the sole object of avoiding admission of the petition.

8.21. It is noted that the present petition under Section 9 of the Insolvency and Bankruptcy Code, 2016, was earlier dismissed by this Tribunal vide order dated 30.04.2021. Subsequently, the Hon'ble NCLAT, in Company Appeal (AT) (CH) (INS) No.185 of 2021, vide order dated 18.10.2022, set

aside the said order and remitted the matter back to this Tribunal for fresh consideration on merits.

8.22. Pursuant thereto, the Applicant has filed a memo dated 20.10.2022 seeking restoration of IBA/1297/2019 in compliance with the aforesaid NCLAT order. Accordingly, the matter has been restored to file and is now being considered afresh on merits, uninfluenced by the earlier dismissal order.

8.23. After hearing both parties and perusing the records, this Tribunal finds that the Operational Creditor has established the existence of an operational debt due and payable by the Corporate Debtor, and the same has been admitted by the Corporate Debtor in its Annual Returns and Minutes of Meeting dated 15.12.2018. The defences raised by the Respondent are found to be untenable and do not constitute a valid dispute under Section 9 of the Code.

8.24. In view of the foregoing discussion, this Tribunal is satisfied that—

a) there exists a legally enforceable operational debt of Rs.10.50 lakhs;

b) the default in payment stands duly established;

c) the petition is within limitation; and

d) there is no pre-existing dispute of a bona fide nature between the parties.

8.25. Accordingly, the Tribunal holds that the ingredients of Section 9 of the Insolvency and Bankruptcy Code, 2016, stand fulfilled.

8.26. In the present case, the Operational Creditor has proposed **CA S. Prabhu** as the Insolvency Resolution Professional in Part – III of the Application. Hence, this Tribunal appoints **CA S. Prabhu** having Registration No: **IBBI/IPA-001/IP-P01275/2018-2019/11948**, (email id: carpprabhu@mail.com) who is having Authorization for Assignment till 31.12.2025 as the "Interim Resolution Professional" (IRP) in respect of the Corporate Debtor. The IRP appointed shall take in this regard such other and further steps as are required under the Code, more specifically in terms of Section 15,17,18 of the Code and file the report within 20 days before this Bench. The powers of the Board of Directors of the Corporate Debtor shall stand superseded as a consequence of the initiation of the CIRP in relation to the Corporate Debtor in terms of the provisions of IBC, 2016.

8.27. As a consequence of the Application being admitted in terms of Section 9 (5) of the Code, the moratorium as envisaged under the

provisions of Section 14(1) and as extracted hereunder shall follow in relation to the Corporate Debtor:

> *a. The institution of suits or continuation of pending suits or proceedings against the respondent including execution of any judgment, decree or order in any court of law, tribunal, arbitration panel or other authority;*
> *b. Transferring, encumbering, alienating or disposing of by the respondent 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 respondent in respect of its property including any action under the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002;*
> *d. The recovery of any property by an owner or lessor where such property is occupied by or in the possession of the respondent.*
>
> *Explanation.-For the purposes of this sub-section, it is hereby clarified that notwithstanding anything contained in any other law for the time being in force, a licence, permit, registration, quota, concession, clearance or a similar grant or right given by the Central Government, State Government, local authority, sectoral regulator or any other authority constituted under any other law for the time being in force, shall not be suspended or terminated on the grounds of insolvency, subject to the condition that there is no default in payment of current dues arising for the use or continuation of the license or a similar grant or right during moratorium period;"*

8.28. However, during the pendency of the moratorium period in terms of Section 14(2) (2A) and 14(3) as extracted hereunder:

> *"(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.*
>
> *(2A) Where the interim resolution professional or resolution professional, as the case may be, considers the supply of goods or services critical to protect and preserve the value of the Corporate Debtor and manage the operations of such Corporate Debtor as a going concern, then the supply of such goods or*

services shall not be terminated, suspended or interrupted during the period of moratorium, except where such Corporate Debtor has not paid dues arising from such supply during the moratorium period or in such circumstances as may be specified.

(3) The provisions of sub-section (1) shall not apply to

(a) such transactions, agreements or other arrangement as may be notified by the Central Government in consultation with any financial sector regulator or any other authority;

(b) a surety in a contract of guarantee to a corporate debtor."

8.29. The duration of the period of moratorium shall be as provided in Section 14(4) of the Code and for ready reference reproduced as follows:

"(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."

8.30. The Operational Creditor is directed to pay a sum of Rs.2,00,000/- (Rupees Two lakh only) to the Interim Resolution Professional upon the Interim Resolution Professional filing the necessary declaration form as required under the provisions of the Code to meet out the expenses to perform the functions assigned to her in accordance to Regulation 6 of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.

8.31. Based on the above terms, the Application stands admitted in terms of Section 9(5) of IBC, 2016 against the Respondent/ Corporate Debtor, M/s Viprah Technologies Limited and the moratorium shall come in to effect as of this date. A copy of the Order shall be communicated to the Operational Creditor as well as to the Corporate Debtor above named by the Registry. In addition, a copy of the Order shall also be forwarded to IBBI for its records. Further, the Interim Resolution Professional above named be also furnished with copy of this Order forthwith by the Registry, who will also communicate the initiation of the CIRP in relation to the Corporate Debtor to the Registrar of Companies concerned.

9. Accordingly, **IBA/1297/(CHE)/2019** is **allowed**.

-Sd-	**-Sd-**
RAVICHANDRAN RAMASAMY	**JYOTI KUMAR TRIPATHI**
MEMBER (TECHNICAL)	MEMBER (JUDICIAL)