



**IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH (COURT- I) CHENNAI**

ATTENDANCE CUM ORDER SHEET OF THE HEARING
HELD ON **04.11.2025** THROUGH VIDEO CONFERENCING

PRESENT: HON'BLE SHRI. SANJIV JAIN, MEMBER (JUDICIAL)
HON'BLE SHRI. VENKATARAMAN SUBRAMANIAM, MEMBER (TECHNICAL)

APPLICATION NUMBER :
PETITION NUMBER : CP(IB)/175(CHE)/2024
NAME OF THE PETITIONER(S) : Nimbark Fashions Ltd
NAME OF THE RESPONDENTS : Soundararaja Mills Ltd
UNDER SECTION : Section 9 Rule 6 of IBC, 2016

ORDER

Present: Ld. Counsel Ms. Madhumitha for the Petitioner.

Ld. Counsel Shri. R. Ramkumar for the Respondent.

Vide separate order pronounced in Open Court, petition is **admitted**. CIRP is initiated against the Corporate Debtor, Soundararaja Mills Limited. Shri. Nagalingam Muthiah is appointed as the IRP.

Sd/-

(VENKATARAMAN SUBRAMANIAM)
MEMBER (TECHNICAL)

MG

Date: 04.11.2025

Sd/-

(SANJIV JAIN)
MEMBER (JUDICIAL)



**IN THE NATIONAL COMPANY LAW TRIBUNAL,
DIVISION BENCH – I, CHENNAI**

CP(IB)/175CHE)2024

*[filed under Section 9 of the Insolvency and Bankruptcy Code, 2016
r/w Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating
Authority) Rules, 2016]*

In the matter of Soundararaja Mills Ltd.

Nimbark Fashions Limited,

Represented by Mr. Nageswaran, Authorised Signatory,

Having its Registered Office at:

No. 1006, Windfall, Sahar Plaza,

J.B. Nagar, Andheri Kurla Road,

Andheri East, Mumbai-400 059

... Operational Creditor/ Petitioner

-Vs-

Soundararaja Mills Limited,

Registered Office/Administrative Office at:

Soundararaja Buildings,

G.T.N. Salai, Dindigul-624 005

... Corporate Debtor/Respondent

Order Pronounced on 4th November, 2025

CORAM :

SANJIV JAIN, MEMBER (JUDICIAL)

VENKATARAMAN SUBRAMANIAM, MEMBER (TECHNICAL)

For Operational Creditor: Shri. T.K. Bhaskar, Advocate

Shri. Raj Jhabakh, Advocate

Shri. V. Adithiyan, Advocate

For Corporate Debtor: Shri. E. Om Prakash, Sr. Advocate

Shri. R. Swarnavel, Advocate

Shri. R. Ramkumar, Advocate



ORDER

This petition under Section 9 of the Insolvency and Bankruptcy Code, 2016 (“IBC”) r/w Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 has been filed by **Nimbark Fashions Limited**, represented by its Authorised Signatory Mr. Nageswaran (hereinafter referred to as “**Operational Creditor/Petitioner**”) against **Soundararaja Mills Limited**, represented by its Managing Director Mr. Kiran Ranjit Soundarajan (hereinafter referred to as (“**Corporate Debtor/Respondent**”) for initiating Corporate Insolvency Resolution Process (“**CIRP**”) against the Corporate Debtor.

Brief Facts of the Case

2. **Part-I** of the petition sets out the particulars of the Petitioner/Operational Creditor, Nimbark Fashions Limited. It has its Registered Office at No. 1006, Windfall, Sahar Plaza, J.B. Nagar, Andheri Kurla Road, Andheri East, Mumbai - 400 059. **Part-II** of the petition sets out the details of the Corporate Debtor, Soundararaja Mills Limited with CIN: U17111TZ1937PLC014821. It was



incorporated on 11.06.1937 with Authorized Share Capital of Rs. 30,000,000/- and Paid-Up Capital of Rs.9,693,360/-. Its Registered Office is situated at Soundararaja Buildings, G.T.N. Salai, Dindigul-624 005 within the jurisdiction of this Tribunal. In **Part-III** of the petition, the Petitioner has proposed the name of Interim Resolution Professional viz., Shri. Nagalingam Muthiah having Registration No. IBBI/IPA-001/IP-P00774/2017-2018/11347. **Part-IV** of the petition contains the particulars of operational debt i.e., Rs.5,34,55,340/- (Rupees Five Crore Thirty-Four Lakhs Fifty-Five Thousand Three Hundred and Forty only) and date of default as 16.04.2023.

Case of the Petitioner

3. As per the averments made in the petition, the Petitioner had delivered Fibre (raw material) to the Corporate Debtor to process into yarn (finished goods) which the Petitioner had to buyback. They entered into a Buyback Agreement dated 01.07.2021 for a period of 60 months or till 30.06.2026 from the date of agreement unless terminated. The agreement was in continuation of the agreements dated 15.08.2018 and 15.08.2019. The Petitioner raised invoices from



time to time on various dates against the supply of raw materials for the period from 31.03.2023 to 07.11.2023 for a total sum of Rs.4,37,51,654/-. It is alleged that against the invoices, the Corporate Debtor neither supplied the finished goods as per the agreement nor made the payment. It is stated that the Petitioner is entitled to interest at the rate of 18% p.a., which comes to Rs.36,12,812/-. Thus, the Respondent, in all, owed a sum of Rs.4,73,64,466/- as on 13.01.2024.

4. It is stated that the Petitioner issued a notice under Section 8 of IBC to the Corporate Debtor claiming a sum of Rs. 4,73,64,466/- as on 13.01.2024 along with interest which the Corporate Debtor replied vide letter dated 26.01.2024. It is stated that the reply clearly proves that the Corporate Debtor has admitted its liability to the Operational Creditor. It is stated that reply sent by the Corporate Debtor was responded by the Petitioner vide letter 30.01.2024.

5. It is stated that the Petitioner also funded a working capital of Rs.95,50,095/- to the Corporate Debtor towards EB Deposit and disbursed the funds / loan for machine advance and maintenance to facilitate the process of manufacturing of finished product (yarn). It is



stated that an interest of 24% p.a. was payable on the said amount. It is stated that as on date i.e., 12.06.2024, an amount of Rs.6,66,38,844/-/- is the outstanding debt inclusive of interest.

6. The Petitioner has annexed copy of Buyback Agreement (Annexure VI), Tabulation of Outstanding (Annexure VII), Record of Default issued by NeSL (Annexure IX), copy of Demand Notice (Annexure I), reply of the Corporate Debtor (Annexure X), e-mail communications (Annexure XI) and copy of the Balance Sheet of the Corporate Debtor for the financial year 2021-2022 (Annexure XII).

Reply filed by the Respondent

7. **On getting notice of the petition**, the Respondent filed the reply stating that the Corporate Debtor owns a textile unit at Dindigul, Tamil Nadu. It was established in 1937. It is a renowned company in the cotton processing. It had entered into three Buyback Agreements with the Petitioner on 15.08.2018, 15.08.2019 and 01.07.2021. As per the agreements, the Petitioner was to supply cotton and take back yarn after paying processing expenses which involve electricity and labour charges. Both had agreed to amend the price of conversion in



accordance with the change in the above two components. It is stated that on many occasions over the last five years, the price of these components steeply went up. The revised worksheet was neither paid nor rejected and the consideration was postponed by the Petitioner. It is stated that taking advantage of the financial liquidity of the Corporate Debtor, the Petitioner continued to exploit the manufacturing facility of the Corporate Debtor despite request which strained their relations and the disputes started. It is stated that the Corporate Debtor faced frequent electricity disconnections and labour unrest. It is alleged that there was no effective sale of goods / transfer of right under the Sales of Goods Act. For convenience in the accounting and movement of goods, both raised invoices on each other. The Petitioner raised the invoices for the cotton sent for processing and the Corporate Debtor raised the invoices while sending the yarn back to the Petitioner after adding the processing charges on the value of the cotton supplied. They both levied GST in the invoices. The differential GST payment was agreed to be paid by the Petitioner to the Corporate Debtor. It is alleged that the Petitioner enjoyed the benefit of higher input tax credit and did not pay the differential GST



to the Corporate Debtor in time. This resulted in fine and penalty by the GST Department on the Corporate Debtor.

8. It is stated that the Petitioner was to supply packing material for the finished goods packing but it forced the Corporate Debtor to procure the packing material. It is stated that the differential payment of Rs.70,00,000/- was neither paid nor any credit note was issued in that regard. The Corporate Debtor requested for this payment several times and sent a mail with the statement of accounts on 03.05.2023 but the Petitioner instead hatched a plan to exit from the contract without making payment by reducing the supply of cotton. It is stated that due to power disconnection, labour unrest and GST and liquidity issue, the processing came down and the plant at Karaikal was shut down in November 2023. At that juncture, the Petitioner sent a notice under Section 8 of IBC calling upon the Corporate Debtor to pay the sum of Rs.8,40,84,840.87. It is stated that the Corporate Debtor timely responded to the notice but the Petitioner sent another notice under the Arbitration and Conciliation Act, 2016 for the initiation of arbitral proceedings. It is stated that before the Corporate Debtor could give its consent and reconcile the issue through a mutually appointed



Arbitrator, the Petitioner filed applications before the Hon'ble Madras High Court under Section 9 and 11 of the Arbitration and Conciliation Act and also filed the petition under Section 9 of IBC. The Corporate Debtor has placed the details of invoices raised by it with the Petitioner during the said period which are reproduced as under:

| YARNSALESTONIMBARK-FORTHE PERIODFROM 01.04.2023 TO10.11.2023 | | | | | | | | |
|--|-------------|--------------|------------------------|--------------------------------|----------|-----------------|--------|---------------|
| INVOICENUMBER | INVOICEDATE | QUANTITY-KGS | CONVERSIONCHARGE PERKG | CONVERSIONCHARGESECEIVABLE-RS. | Rate-Rs. | Value beforeGST | GST12% | ValueafterGST |
| SRMB01/2023-2024 | 03-04-2023 | 1440.00 | 144.40 | 207936 | 277.72 | 399917 | 47990 | 447907 |
| SRMB01/2023-2024 | 03-04-2023 | 2160.00 | 144.40 | 311904 | 277.72 | 599875 | 71985 | 671860 |
| SRMB01/2023-2024 | 03-04-2023 | 3000.00 | 172.00 | 516000 | 343.66 | 1030980 | 123718 | 1154698 |
| SRMB01/2023-2024 | 03-04-2023 | 2400.00 | 114.00 | 273600 | 247.32 | 593568 | 71228 | 664796 |
| SRMB02/2023-2024 | 07-04-2023 | 3600.00 | 144.40 | 519840 | 277.72 | 999792 | 119975 | 1119767 |
| SRMB02/2023-2024 | 07-04-2023 | 3000.00 | 172.00 | 516000 | 343.66 | 1030980 | 123718 | 1154698 |
| SRMB02/2023-2024 | 07-04-2023 | 2400.00 | 114.00 | 273600 | 247.32 | 593568 | 71228 | 664796 |
| SRMB03/2023-2024 | 12-04-2023 | 2520.00 | 144.40 | 363888 | 277.72 | 699854 | 83983 | 783837 |
| SRMB03/2023-2024 | 12-04-2023 | 3720.00 | 172.00 | 639840 | 343.66 | 1278415 | 153410 | 1431825 |
| SRMB03/2023-2024 | 12-04-2023 | 2760.00 | 114.00 | 314640 | 247.32 | 682603 | 81912 | 764516 |
| SRMB04/2023-2024 | 17-04-2023 | 3300.00 | 144.40 | 476520 | 277.72 | 916476 | 109977 | 1026453 |
| SRMB04/2023-2024 | 17-04-2023 | 3000.00 | 172.00 | 516000 | 343.66 | 1030980 | 123718 | 1154698 |
| SRMB04/2023-2024 | 17-04-2023 | 2700.00 | 114.00 | 307800 | 247.32 | 667764 | 80132 | 747896 |
| SRMB05/2023-2024 | 21-04-2023 | 6240.00 | 144.40 | 901056 | 277.72 | 1732973 | 207957 | 1940930 |
| SRMB05/2023-2024 | 21-04-2023 | 1800.00 | 172.00 | 309600 | 343.66 | 618588 | 74231 | 692819 |
| SRMB05/2023-2024 | 21-04-2023 | 960.00 | 114.00 | 109440 | 247.32 | 237427 | 28491 | 265918 |
| SRMB06/2023- | 28-04- | 1500.00 | 144.40 | 216600 | 327.42 | 491130 | 58936 | 550066 |



| | | | | | | | | |
|------------------|------------|---------|--------|---------|--------|---------|--------|---------|
| 2024 | 2023 | | | | | | | |
| SRMB06/2023-2024 | 28-04-2023 | 581.20 | 144.40 | 83925 | 277.72 | 161411 | 19369 | 180780 |
| SRMB06/2023-2024 | 28-04-2023 | 535.50 | 144.40 | 77326 | 277.72 | 148719 | 17846 | 166565 |
| SRMB06/2023-2024 | 28-04-2023 | 6000.00 | 172.00 | 1032000 | 343.66 | 2061960 | 247435 | 2309395 |
| SRMB06/2023-2024 | 28-04-2023 | 360.00 | 114.00 | 41040 | 247.32 | 89035 | 10684 | 99719 |
| SRMB07/2023-2024 | 03-05-2023 | 3120.00 | 144.40 | 450528 | 327.42 | 1021550 | 122586 | 1144136 |
| SRMB07/2023-2024 | 03-05-2023 | 2700.00 | 172.00 | 464400 | 343.66 | 927882 | 111346 | 1039228 |
| SRMB07/2023-2024 | 03-05-2023 | 300.00 | 172.00 | 51600 | 339.83 | 101949 | 12234 | 114183 |
| SRMB07/2023-2024 | 03-05-2023 | 1620.00 | 172.00 | 278640 | 339.83 | 550525 | 66063 | 616588 |
| SRMB07/2023-2024 | 03-05-2023 | 1200.00 | 114.00 | 136800 | 251.36 | 301632 | 36196 | 337828 |
| SRMB07/2023-2024 | 03-05-2023 | 87.10 | 114.00 | 9929 | 251.36 | 21893 | 2627 | 24521 |
| SRMB08/2023-2024 | 06-05-2023 | 2400.00 | 172.00 | 412800 | 339.83 | 815592 | 97871 | 913463 |
| SRMB08/2023-2024 | 06-05-2023 | 2100.00 | 114.00 | 239400 | 251.36 | 527856 | 63343 | 591199 |
| SRMB09/2023-2024 | 09-05-2023 | 720.00 | 172.00 | 123840 | 339.83 | 244678 | 29361 | 274039 |
| SRMB09/2023-2024 | 09-05-2023 | 2880.00 | 114.00 | 328320 | 255.03 | 734486 | 88138 | 822625 |
| SRMB10/2023-2024 | 16-05-2023 | 4200.00 | 172.00 | 722400 | 339.83 | 1427286 | 171274 | 1598560 |
| SRMB10/2023-2024 | 16-05-2023 | 4800.00 | 114.00 | 547200 | 251.36 | 1206528 | 144783 | 1351311 |
| SRMB11/2023-2024 | 20-05-2023 | 5100.00 | 172.00 | 877200 | 339.83 | 1733133 | 207976 | 1941109 |
| SRMB11/2023-2024 | 20-05-2023 | 3900.00 | 114.00 | 444600 | 251.36 | 980304 | 117636 | 1097940 |

| | | | | | | | | |
|------------------|------------|---------|--------|--------|--------|---------|--------|---------|
| SRMB12/2023-2024 | 29-05-2023 | 2160.00 | 172.00 | 371520 | 339.83 | 734033 | 88084 | 822117 |
| SRMB12/2023-2024 | 29-05-2023 | 6840.00 | 114.00 | 779760 | 251.36 | 1719302 | 206316 | 1925619 |
| SRMB13/2023-2024 | 03-06-2023 | 2160.00 | 172.00 | 371520 | 339.83 | 734033 | 88084 | 822117 |
| SRMB13/2023-2024 | 03-06-2023 | 6840.00 | 114.00 | 779760 | 251.36 | 1719302 | 206316 | 1925619 |
| SRMB14/2023-2024 | 12-06-2023 | 1200.00 | 172.00 | 206400 | 339.83 | 407796 | 48936 | 456732 |
| SRMB14/2023-2024 | 12-06-2023 | 2700.00 | 114.00 | 307800 | 251.36 | 678672 | 81441 | 760113 |
| SRMB14/2023-2024 | 12-06-2023 | 5100.00 | 114.00 | 581400 | 254.06 | 1295706 | 155485 | 1451191 |
| SRMB15/2023-2024 | 17-06-2023 | 1560.00 | 172.00 | 268320 | 339.83 | 530135 | 63616 | 593751 |
| SRMB15/2023-2024 | 17-06-2023 | 7440.00 | 114.00 | 848160 | 254.06 | 1890206 | 226825 | 2117031 |
| SRMB16/2023-2024 | 27-06-2023 | 2400.00 | 172.00 | 412800 | 339.83 | 815592 | 97871 | 913463 |
| SRMB16/2023-2024 | 27-06-2023 | 6600.00 | 114.00 | 252400 | 254.06 | 1676796 | 201216 | 1878012 |
| SRMB17/2023-2024 | 03-07-2023 | 900.00 | 172.00 | 154800 | 339.83 | 305847 | 36702 | 342549 |
| SRMB17/2023-2024 | 03-07-2023 | 3100.00 | 114.00 | 529400 | 254.06 | 2057886 | 246946 | 2304832 |
| SRMB18/2023-2024 | 11-07-2023 | 2700.00 | 172.00 | 464400 | 339.83 | 917541 | 110105 | 1027646 |



| 2024 | 2023 | | | | | | | |
|------------------|------------|-------------|--------|----------------|--------|----------------|--------------|----------------|
| SRMB18/2023-2024 | 11-07-2023 | 5280.00 | 114.00 | 601920 | 254.06 | 1341437 | 160972 | 1502409 |
| SRMB18/2023-2024 | 11-07-2023 | 1020.00 | 114.00 | 116280 | 249.34 | 254327 | 30519 | 284846 |
| SRMB20/2023-2024 | 26-07-2023 | 6720.00 | 172.00 | 1155840 | 339.83 | 2283658 | 274039 | 2557697 |
| SRMB20/2023-2024 | 26-07-2023 | 2280.00 | 172.00 | 392160 | 334.84 | 763435 | 91612 | 855047 |
| SRMB21/2023-2024 | 31-07-2023 | 9000.00 | 172.00 | 1548000 | 334.84 | 3013560 | 361627 | 3375187 |
| SRMB22/2023-2024 | 11-08-2023 | 9000.00 | 172.00 | 1548000 | 334.84 | 3013560 | 361627 | 3375187 |
| SRMB23/2023-2024 | 18-08-2023 | 9000.00 | 172.00 | 1548000 | 334.84 | 3013560 | 361627 | 3375187 |
| SRMB24/2023-2024 | 25-08-2023 | 9000.00 | 172.00 | 1548000 | 334.84 | 3013560 | 361627 | 3375187 |
| SRMB25/2023-2024 | 31-08-2023 | 9000.00 | 172.00 | 1548000 | 333.21 | 2998890 | 359867 | 3358757 |
| SRMB26/2023-2024 | 07-09-2023 | 9000.00 | 172.00 | 1548000 | 333.21 | 2998890 | 359867 | 3358757 |
| SRMB28/2023-2024 | 13-09-2023 | 9000.00 | 172.00 | 1548000 | 333.21 | 2998890 | 359867 | 3358757 |
| SRMB31/2023-2024 | 28-09-2023 | 4620.00 | 172.00 | 794640 | 322.12 | 1488194 | 178583 | 1666778 |
| SRMB32/2023-2024 | 30-10-2023 | 6960.00 | 172.00 | 1197120 | 329.00 | 2289840 | 274781 | 2564621 |
| SRMB32/2023-2024 | 30-10-2023 | 2040.00 | 152.00 | 310080 | 287.34 | 586174 | 70341 | 656514 |
| SRMB33/2023-2024 | 06-11-2023 | 6240.00 | 172.00 | 1073280 | 329.00 | 2052960 | 246355 | 2299315 |
| SRMB33/2023-2024 | 06-11-2023 | 2160.00 | 152.00 | 328320 | 287.34 | 620654 | 74479 | 695133 |
| SRMB33/2023-2024 | 06-11-2023 | 600.00 | 198.00 | 118800 | 333.34 | 200004 | 24000 | 224004 |
| | | 246723.80 | | 37243093 | | 75075751 | 9009090 | 84084841 |
| | | 2,46,723.80 | | 3,72,43,092.88 | | 7,50,75,750.78 | 90,09,090.09 | 8,40,84,840.87 |

9. It is stated that as per Clause-P5 of the agreement, the Corporate Debtor was not to make any payment to the Petitioner but to adjust the supply invoices against the receivables towards the finished goods invoices. It is stated that as per Clause P4, payment for supply of raw material including GST would be adjusted by the mill against the receivables for supply of yarn including GST from the Petitioner.



Rejoinder by the Petitioner

10. The Petitioner filed the rejoinder wherein it denied the averments made in the reply and reiterated what it has stated in the petition. It is stated that as per the agreement, the Corporate Debtor had agreed to the amount as per Tabulation under Clause G-1. They had agreed on the rates specified in the agreement after negotiation. They continued the business on the same agreed rates, hence the Corporate Debtor cannot cry foul stating increase in the labour cost and ancillary cost. The rates fixed for conversion of various yarns in Clause G-1 were as under:

| Sl. No. | Description | Yam Realisation % | Allotted Spindle | Estimated Production Range Per Month (in MT) | Estimated Average Production Quantity Per Month (in MT) | Value Addition Per Count Per Kg in Excess of Clean Raw Material Cost (CRMC) |
|---------|--|-------------------|------------------|--|---|---|
| 1 | Ne 24/1 GLR/Ne 27/1 SEG (10% MP, 70% 34 (or) 40mm or 44 mm TBL & 20% 12mm-TBL) | 95% | 3584 | 55-65 | 60 | Rs.1.75 |



| | | | | | | |
|---|---|---|------|-------|----|---------|
| 2 | Ne 60/1 Micro Modal & Micro Viscose (100%-MM & 100%-MV) | 94.5% | 1792 | 8-12 | 10 | Rs.1.60 |
| 3 | Nc 60/2 Micro Modal & Micro Viscose (100%-MM& 100%-MV) | 94.0% | 1792 | 8-12 | 10 | Rs.2.10 |
| 4 | Ne 76/2 Polyester/Viscose (MIP 65%/MV 35%) | Polyester 96.5% Viscose 94.0% Overall 95.625% | 8064 | 35-45 | 40 | Rs 1.90 |
| 5 | Ne 80/1 Micro Modal & Micro Viscose (100%-MM & 100%-MV) | 94.5% | 1792 | 6-8 | 6 | Rs.1.75 |
| 6 | Ne 80/2 Micro Modal & Micro Viscose (100%-MM& 100%-MV) | 94.0% | 1792 | 6-8 | 6 | Rs.2.25 |
| 7 | Ne 80/2 Polyester/Cotton Combed TFO (MP 65%/COTTON 35%) | Polyester 96.5% Cotton 67.5% Overall 86.35% | 8064 | 30-40 | 35 | Rs.2.15 |

11. It is stated that as per Clause M-9, the rates for conversion / processing charge shall be revised / amended only as per the Clause.

Clause G-1 which reads as under:



"M-9 'NFL' understands that the above said BUY BACK agreement is based on current prevailing Labour Laws as well as current prevailing Wages including (but not limited to) the Minimum Wages Act and Labour Act. Therefore, in case there happens to be any revisions / amendments to the above acts then suitable changes would be made to this agreement."

12. It is stated that the Corporate Debtor sought additional financial support from the Petitioner which the Petitioner provided to sustain Corporate Debtor's business and operational stability as the Corporate Debtor was entirely and solely functioning for the Petitioner. It is stated that in line with the agreement, the Petitioner provided the raw material to the Corporate Debtor on the expectation that the Corporate Debtor would in turn supply the finished products and issue invoices so that the Operational Creditor / Petitioner could remit the balance but in the present case, the Corporate Debtor failed to meet its contractual obligations by neither supplying the finished products nor honouring the Petitioner's invoices. It is stated that on 16.11.2023, the Petitioner sent a mail enquiring about its goods since the finished goods were not returned as per the terms of the agreement. However, there was no proper reply. It is stated that a stock worth Rs.5,00,00,000/- approximately was lying with the Corporate Debtor. It



is stated that account reconciliation with effect from 01.04.2023 till the transaction on 30.11.2023 establishes the substantial outstanding balance owed by the Corporate Debtor which is as follows:

| Soundararaja Mills Account reconciliation 01.04.2023 till 30.11.2023 (last Transaction) | | | |
|--|---|---------------|-----------------|
| | Particulars | Amount | Amount |
| | Opening Balance as on 01.04.2023 | | 47673667 |
| Add: | Fibre Supplied to Soundararaja during this period | | 40932367 |
| Add: | Payment Made to Soundararaja during this period | | 48759306 |
| Add: | Advances given during this period | | 750000 |
| Add: | TDS and TCS reversed because not paid by Soundararaja Mills | | 161852 |
| | Total Amount Debited to Soundararaja Mills | | 138277192 |
| Less: | | | |
| | Material Supplied by Soundararaja during this period | | 84897615 |
| | TDS Deducted | | -75763 |
| | Total Amount Credited to Soundararaja Mills | | 84821852 |
| | Amount Receivable from Soundararaja Mills | | 53455340 |

13. It is stated that the Corporate Debtor supplied only a partial quantity of finished products while unlawfully retaining



approximately 160.0 tons of stock. It is stated that the Petitioner rightly initiated the arbitral proceedings as per the agreement. It is stated that the arbitral proceedings do not create a bar for initiating insolvency proceedings against the Corporate Debtor. The Petitioner has placed the copy of the notice dated 16.02.2024 invoking the arbitration, Section 11 application filed for the appointment of an Arbitrator, Section 17 application filed before the Arbitrator and the claim statement vide S.R. No.1621 dated 24.04.2025. The Petitioner has also given breakup of calculations vide memo filed on 16.04.2025 enclosing the advances details and tabulation of invoices.

14. The Respondent also filed copy of mail communications during the period from 12.07.2022 to 22.12.2023 and copy of the counter claim filed before the Arbitrator on 05.01.2025.

Arguments and Contentions

15. We have heard the arguments advanced by Ld. Counsels for the parties.

16. **Ld. Counsel for the Petitioner** argued on the line of petition and the Rejoinder. He submits that the present proceedings arise out of the



Buyback Agreement dated 01.07.2021. The Petitioner supplied the raw material to the Corporate Debtor for processing into yarn and other finished goods as per the Petitioner's requirement. The agreement expressly obligated the Corporate Debtor to package the finished goods and despatch the same on the instructions of the Petitioner. Ld. Counsel submits that the Corporate Debtor was experiencing financial distress and was in continuous need of financial support. Considering the precarious financial condition of the Corporate Debtor, the Petitioner under no contractual obligation to provide any financial assistance beyond the payments stipulated in the contract, voluntarily provided the financial support to enable the day-to-day operations of the mill. Learned Counsel submits that the Petitioner fulfilled its contractual obligations by supplying the raw material. It raised the invoices for the raw material but the Corporate Debtor neither returned the raw material nor supplied the finished goods. Learned Counsel submits that the Petitioner has come to know that the Corporate Debtor has been selling the finished products using the raw material supplied by the Petitioner under its own packing and labelling. It is stated that this is a clear breach of contractual



obligations. Learned Counsel submits that the Petitioner sought an interim injunction under Section 9 of the Arbitration & Conciliation Act for restraining the Corporate Debtor from using the raw material supplied by the Petitioner to protect its interest. Hon'ble Madras High Court considering the submissions granted an injunction in O.A. nos. 154 & 155 of 2024. Ld. Counsel submits that the injunction was vacated for want of jurisdiction. Learned Counsel submits that the Corporate Debtor unlawfully retained about 160.0 tons of stock being the raw material and the finished goods.

17. Learned Counsel submits that Section 11 petition has been filed to initiate the arbitral proceedings in terms of the agreement which is not a forum shopping but to protect the contractual rights of the Petitioner. Learned Counsel submits that there was no pre-existing dispute prior to sending the notice under Section 8 of IBC. The arbitral proceedings were initiated solely for the purpose of safeguarding and recovering the raw material or the finished goods. As per books of accounts as on 31.03.2024, the outstanding dues stand as Rs.6,66,38,844/-. Learned Counsel submits that Demand Notice in Form-3 was sent to the Corporate Debtor on 13.01.2024 while the notice



invoking the arbitration was despatched on 16.02.2024. Learned Counsel referred the case of *Mobilox Innovations Pvt. Ltd., Vs Kirusa Software (P) Limited-2017 1 SCC OnLine SC 353, Innoventive Industries Ltd. Vs ICICI Bank and Anr – (2018) 1 SCC 407, Ahluwalia Contracts (India) Limited Vs Raheja Developers Limited Company Appeal (AT) (Insolvency) No.703 of 2018 and M/s Educomp Infrastructure & School Management Limited Vs M/s. Millenium Education Foundation Company Petition No.(IB) 245(ND)/2022* to contend that the Corporate Debtor within a period of 10 days of Demand Notice must bring to the notice of the Operational Creditor the existence of dispute and / or the record of pendency of a suit or arbitration proceedings filed before the receipt of such notice or invoice in relation to such dispute. The Corporate Debtor cannot rely on the arbitration proceeding to suggest a pre-existing dispute after the notice u/s 8 of IBC, to deny admission of the petition filed u/s 9 of IBC. Learned Counsel submits that dispute must be pre-existing i.e., it must exist before the receipt of the Demand Notice.

18. Learned Counsel submits that the Corporate Debtor's claim of having supplied finished products worth Rs.8,40,84,841/- is



misrepresentation of facts. The Petitioner has submitted a detailed calculation. The reconciliation statement clearly demonstrates the substantial outstanding balance owed by the Corporate Debtor to the Petitioner as outlined and tabulated in para-11 *supra*.

19. Learned Counsel submits that the total value of the material supplied by the Corporate Debtor i.e., Rs.8,40,84,841/- has been included in the overall claim of Rs.13,82,77,191/-. After accounting the deductions such as TDS and the amount credited, the outstanding amount due and payable is Rs.5,34,55,340/-. Learned Counsel submits that in addition, the Corporate Debtor exploited the advance given by the Petitioner for the business operations including procurement of machinery etc.

20. Learned Counsel submits that no invoices were raised by the Corporate Debtor supporting its claims. The defence raised by the Corporate Debtor is moonshine.

21. **Learned Counsel for the Corporate Debtor** argued on the lines of the reply. He contended that the Corporate Debtor supplied back the entire lot after processing during the period from 31.03.2023 to



07.11.2023 for an amount of Rs.8,40,84,840.87 against the raw material of a value of Rs.4,37,51,654/-. This is evident from the documents filed with the rejoinder and GST invoices. The Petitioner has also admitted the receipt of goods. Learned Counsel submits that the Petitioner after issuing the notice in Form 3 on 13.01.2024 set in motion the arbitral proceedings to resolve the pre-existing dispute vide notice dated 16.02.2024. Ld. Counsel submits that the notice was issued because the Corporate Debtor had highlighted the disputes in the reply. Learned Counsel submits that the Petitioner and the Corporate Debtor have filed the claims and counter claims before the Arbitrator and the proceedings are underway. Ld. Counsel submits that the Petitioner has also filed two complaints u/s 138 of Negotiable Instruments Act, 1881 on the same cause of action which also show the existence of disputes between the parties. Ld. Counsel submits that the Petitioner on its own volition has not only confirmed the pre-existing disputes but also set in motion the arbitration proceedings. Ld. Counsel also highlighted the discrepancy in the amount claimed in the petition and the amount alleged in the notice under Section 8 of IBC. Ld. Counsel submits that in the notice dated 13.01.2024, the amount of debt has



been stated as Rs.4,73,64,466/- which includes the principal sum of Rs.4,37,51,654/- and interest of Rs.36,12,812/- in respect of the invoices for the period from 31.03.2023 to 07.11.2023. However, in the petition filed under Section 9 of IBC in Part-III, the total amount of debt is stated as Rs.5,34,55,340/- as per books of accounts along with an interest of Rs.1,31,83,504/-. In the petition, it was stated that the Petitioner had also funded the Respondent a Working Capital of Rs.95,50,095/- towards EB deposit and disbursed funds / loan for machinery advance and maintenance to facilitate the process of manufacturing of yarn against which it is entitled to interest @ 24% per annum. However, in the notice, the Petitioner did not state a single word about the working capital. The difference in the figure itself amounts to a dispute. Ld. Counsel referred the mail communication to contend that the Respondent had made communications regarding increase in power tariff over the years for an amount of Rs.1,14,59,047/- and differential GST remittances which the Petitioner never responded nor made the payments. Ld. Counsel submits that invocation of arbitration amounts to dispute which was pre-existing at the time the notice was sent by the Petitioner. Ld. Counsel submits that the



Respondent has filed the counter claim before the Arbitrator stating that after adjustments, a sum of Rs.71,83,327/- is payable by the Petitioner as tabulated below:

| Sl. No. | Particulars | Receivable in Rs. | Payable in Rs. |
|---------|---|--------------------|----------------|
| 1 | Balance payable as on 31.03.2023 by the Claimant to the Respondent. | 4,58,00,000/- | |
| 2 | Money claimed by the Claimant upto March 2023 | | 4,76,73,667/- |
| 3 | Value of raw material supplied by the Claim Petitioner to the Respondent from 01.04.2023 to 07.11.2023 | | 4,09,32,367/- |
| 4 | Value of finished goods supplied by the Respondent to the Claimant from 01.04.2023 to 06.11.2023 | 8,48,97,615/- | |
| 5. | Increased cost of production during the period between 01.04.2023 and 06.11.2023. A detailed worksheet is annexed and marked as Exhibit R-10. | 1,46,01,052/- | |
| 6 | Payments made by the Claimant to the Respondent against old dues as well as the supply invoices raised during the period between 01.04.2023 to 06.11.2023 | | 4,95,09,306/- |
| 7 | Total | 14,52,98,667/- | 13,81,15,340/- |
| 8 | Balance receivable from Claimant | 71,83,327/- | |

22. Ld. Counsel submits that the Respondent was adjudicated by GST Department in the order dated 03.05.2024 levying a sum of Rs.3,93,47,719/- because of non-payment of GST difference by the Petitioner as agreed upon resulting into non-discharge of GST liability



by the Respondent in time which led to penalty and fine. He submits that the dispute raised by the Corporate Debtor is not a moonshine defence but a plausible one.

23. **Ld. Counsel for the Petitioner in rejoinder arguments** referred the mail communications to contend that the Respondent had admitted its liability which is also reflected in the statement of accounts showing an entry of Rs. 4,76,79,479/-. The Corporate Debtor had sent a mail on 08.11.2023 attaching the ledger statement of sale and purchase from 01.04.2023 to 30.09.2023 (Page-88 of S.R. No. 5869 dated 04.12.2024). The Corporate Debtor had also sent a mail dated 08.09.2023 attaching a draft letter of balance confirmation as on 31.03.2023 confirming the debit balance of Rs.4,76,73,667/- as on 31.03.2023. Ld. Counsel submits that since the agreement contained an Arbitration Clause and the Petitioner apprehended that the Respondent could dispose of the raw material, it initiated the arbitral proceedings by sending a notice invoking the arbitration which was much after the notice sent under Section 8 of IBC so as to restrain the Corporate Debtor from disposing of the goods which remedy is not available under the IBC proceedings. Ld. Counsel submits that no dispute was ever raised by the Corporate



Debtor before the notice and the Petitioner can maintain the two parallel proceedings against the Corporate Debtor. Ld. Counsel referred the case of *Sushil Kanugolu vs. Sammunati Agro Solutions Pvt. Ltd. and Ors.* [MANU/NL/0624/2022] and *Ahluwalia Contracts (India) Limited vs. Raheja Developers Limited* [MANU/NL/0318/2019] where it was held that the existence of dispute and/or a suit of arbitration proceedings must be pre-existing i.e. before receipt of Demand Notice as settled by the Hon'ble Supreme Court in the case of *Mobilox Innovations Private Limited vs. Kirusa Software (P) Limited* [MANU/SC/1196/2017].

Additional Information

24. This Tribunal vide an order dated 18.09.2025, had directed the Operational Creditor to file the details as to on which date the amount was lent by the Operational Creditor and when was the amount repaid; month-wise purchase and sales for FY 2021, 2022, 2023 and 2024; details of netting of transactions; confirmation of balances obtained from other party on FY 2021, 2022, 2023 and 2024; any earlier occasion, when the Corporate Debtor paid cash in lieu of supply of



finished goods in terms of Buyback Agreement; and whether the arbitration proceedings relate to the same cause of action. The Corporate Debtor was also directed to file the audited Balance Sheets for the years 2021 to 2025 with Schedule and total turnover of the Company including the turnover made with the Operational Creditor for FY 2021 to 2024.

25. The Petitioner filed a memo vide S.R. No. 4144 dated 29.09.2025 enclosing the Master Data of the Corporate Debtor, sums lent to the Corporate Debtor on various dates, month-wise purchase and sales for the FY 2021-2024 and netting of transactions. The Corporate Debtor filed a memo vide S.R. No. 4145 dated 29.09.2025 attaching the 83rd & 84th Annual Reports of the Corporate Debtor for the FY 2020-2021 and 2021-2022 and Turnover Abstract of 2020-2022. Ld. Counsel stated that after 2022, no financial statements were submitted to the RoC since no auditing was done.

26. Further clarification was sought on 27.10.2025. It was clarified by the Petitioner that the parties had transactions since the year 2018. The business transactions were on a current, running and mutual



account. After setting of the invoices on first-in-first out basis' (FIFO), the first invoice which came to be default by the Corporate Debtor was the one raised on 31.03.2023. As per the terms of the invoice, the payment was to be made within a period of 15 days from the date of invoice. It was submitted that the Corporate Debtor failed to supply the finished goods for the raw material supplied and clear the pending invoices for the period from 31.03.2023 to 07.11.2023 as per the terms of the agreement between the parties. Hence, 15 days period to make the payment for the invoice dated 31.03.2023 would be 15.04.2023 and the default started running from the next date i.e. 16.04.2023. Section 3(12) of IBC was referred which defines the default. It means non-payment of debt when whole or any part or instalment of the amount has become due and payable and it is not paid by the debtor or the Corporate Debtor, as the case may be. It was submitted that there is no embargo on the creditor to only consider the date of that invoice when the entire sum which has become due and payable quantifies to the threshold of Rs.1.0 Crore. The date of default assumes importance only for the purpose of computing limitation period to institute action under CIRP. Limitation is not in question in the present case. The



same is also settled by the Hon'ble NCLAT in the case of *State Bank of India vs. Rakesh Hariram Agarwal and Anr. in Company Appeal (AT) (Ins) No. 246 of 2025 & Comp. Appeal (AT) (Ins) No. 282 of 2025*. It was submitted that the Petitioner has demonstrated the twin conditions of debt and default by the Corporate Debtor. Applying the FIFO principles, first invoice dated 31.03.2023 became due for payment on 15.04.2023 and the date of default occurred on 16.04.2023. It was submitted that it is not incumbent upon the Petitioner to wait until the last invoice to become due to calculate the date of default.

27. On the point of varying sums, it was clarified vide clarification memo vide S.R. No. 4539 dated 29.10.2025 that for a petition under Section 9 of IBC, default should be above Rs.1.0 Crore. In the present case, there is an acknowledgment by the Corporate Debtor which is above Rs.1.0 Crore. In the petition at page-12, the amount of Rs.5,34,55,340/- includes Rs.95,50,095/- paid to the Corporate Debtor as loan. At page-13, the amount of Rs.4,37,51,654/- is basically the value of all the invoices due from 31.03.2023 to 07.11.2023 which is also demonstrated at page-32. When an interest @ 18% per annum is added until 13.01.2024, it becomes Rs.4,73,64,466/- which amount is



mentioned in the Demand Notice issued on 13.01.2024. Further, the Corporate Debtor has admitted the default in its e-mails sent to the Petitioner dated 08.09.2023. Admittedly, as per the Corporate Debtor, the balance as on 31.03.2023 is Rs.4,76,73,667/-. The reconciliation statement at page-87 of rejoinder evidences the said sum of Rs.4,76,79,479.10/- as the balance as per the books of the Corporate Debtor. Page-32 of the rejoinder contains an e-mail dated 08.11.2023 showing the draft sales and purchase ledger statement of the Corporate Debtor upto 30.09.2023 and reconciliation of the ledger statements admittedly demonstrates a sum of Rs.4,44,36,678/- due and pending as on 30.09.2023.

28. The Corporate Debtor also filed a memo/ reply vide S.R. No.4545 dated 30.10.2025 clarifying that at page-48 of the petition, it was stated that the Petitioner shall pay the invoice P-2 including GST difference on 10th day of month after adjusting the cost of raw material supplied with respect to a particular lot. Title of the goods was always retained by the OC (page-30). OC was free to take back the goods as per Clause M-11 if the goods are not processed by the Corporate Debtor. It was stated that there is no existing debt nor any default. The payment of



Rs.95,50,095/- is a fraud played by the Petitioner as in the Demand Notice the said amount was not mentioned. Not an iota of evidence is produced by the Petitioner that the money was lent to the Corporate Debtor. The alleged unsigned and unauthenticated acknowledgment of balance as on 31.03.2023 is completely false. The Arbitrator also dismissed the interim application of the Petitioner with the observations that the Petitioner has approached the Tribunal by suppressing the material facts which disentitles it for the discretionary remedy.

Findings of the Tribunal

29. We have given our thoughtful consideration to the rival contentions, notes of submissions filed by the parties and the case laws referred *supra* and perused the record.

30. As per Section 9(5)(ii)(d) of IBC, 2016, an application under Section 9 is liable to be rejected where a notice of dispute has been received by the Operational Creditor or a record of dispute exists in the Information Utility. Section 9(5)(ii) reads as under:



(ii) reject the application and communicate such decision to the operational creditor and the corporate debtor, if—

(a) the application made under sub-section (2) is incomplete;

(b) there has been [payment] of the unpaid operational debt;

(c) the creditor has not delivered the invoice or notice for payment to the corporate debtor;

***(d) notice of dispute has been received by the operational creditor or there is a record of dispute in the information utility;
or***

(e) any disciplinary proceeding is pending against any proposed resolution professional:

31. As per Section 8(2)(a) of IBC, such notice of dispute must necessarily be communicated within ten days of receipt of Form-3 Demand Notice and must pertain to a dispute which was already in existence prior to the issuance of such Demand Notice. Section 8 reads as under:

“Section 8. Insolvency resolution by operational creditor.

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



(2) The corporate debtor shall, within a period of ten days of the receipt of the demand notice or copy of the invoice mentioned in sub-section (1) bring to the notice of the operational creditor

(a) existence of a dispute, [if any, or] record of the pendency of the suit or arbitration proceedings filed before the receipt of such notice or invoice in relation to such dispute;

(b) the [payment] of unpaid operational debt

(i) by sending an attested copy of the record of electronic transfer of the unpaid amount from the bank account of the corporate debtor; or

(ii) by sending an attested copy of record that the operational creditor has encashed a cheque issued by the corporate debtor.

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

32. Section 5(6) provides an inclusive definition for the term 'dispute' according to which the dispute in issue must relate to (i) the existence of the debt itself, (ii) the quality of goods or services, or (iii) breach of representation or warranty. Section 5(6) reads as under:

(6) "dispute" includes a suit or arbitration proceedings relating to—

(a) the existence of the amount of debt;

(b) the quality of goods or service; or

(c) the breach of a representation or warranty;



33. The meaning of the term 'dispute' is discussed by the Hon'ble Supreme Court in the case of *Mobilox Innovations Private Limited Vs. Kirusa Software Private Limited (Civil Appeal No. 9405 of 2017)*. In the said judgement, the Hon'ble Supreme Court has held that dispute relied upon by the Corporate Debtor must be a pre-existing dispute, i.e., one which was in existence before the Demand Notice was issued and such dispute must be genuine and fall within the ambit of Section 5(6). The relevant paragraph is extracted hereunder:

*"24. The scheme under Sections 8 and 9 of the Code, appears to be that an operational creditor, as defined, may, on the occurrence of a default (i.e., on non-payment of a debt, any part whereof has become due and payable and has not been repaid), deliver a demand notice of such unpaid operational debt or deliver the copy of an invoice demanding payment of such amount to the corporate debtor in the form set out in Rule 5 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 read with Form 3 or 4, as the case may be (Section 8(1)). Within a period of 10 days of the receipt of such demand notice or copy of invoice, the corporate debtor must bring to the notice of the operational creditor the existence of a dispute and/or the record of the pendency of a suit or arbitration proceeding filed before the receipt of such notice or invoice in relation to such dispute (Section 8(2)(a)). **What is important is that the existence of the dispute and/or the suit or arbitration proceeding must be pre-existing – i.e. it must exist before the receipt of the demand notice or invoice, as the case may be.** In case the unpaid operational debt has been repaid, the corporate debtor shall within a period of the self-same 10 days send an attested copy of the record of the electronic transfer of the unpaid amount from the bank account of the corporate debtor or send an attested copy of the record that the operational creditor has encashed a*



cheque or otherwise received payment from the corporate debtor (Section 8(2)(b)). It is only if, after the expiry of the period of the said 10 days, the operational creditor does not either receive payment from the corporate debtor or notice of dispute, that the operational creditor may trigger the insolvency process by filing an application before the adjudicating authority under Sections 9(1) and 9(2). This application is to be filed under Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 in Form 5, accompanied with documents and records that are required under the said form. Under Rule 6(2), the applicant is to dispatch by registered post or speed post, a copy of the application to the registered office of the corporate debtor. Under Section 9(3), along with the application, the statutory requirement is to furnish a copy of the invoice or demand notice, an affidavit to the effect that there is no notice given by the corporate debtor relating to a dispute of the unpaid operational debt and a copy of the certificate from the financial institution maintaining accounts of the operational creditor confirming that there is no payment of an unpaid operational debt by the corporate debtor. Apart from this information, the other information required under Form 5 is also to be given. Once this is done, the adjudicating authority may either admit the application or reject it. If the application made under sub-section (2) is incomplete, the adjudicating authority, under the proviso to sub-section 5, may give a notice to the applicant to rectify defects within 7 days of the receipt of the notice from the adjudicating authority to make the application complete. Once this is done, and the adjudicating authority finds that either there is no repayment of the unpaid operational debt after the invoice (Section 9(5)(i)(b)) or the invoice or notice of payment to the corporate debtor has been delivered by the operational creditor (Section 9(5)(i)(c)), or that no notice of dispute has been received by the operational creditor from the corporate debtor or that there is no record of such dispute in the information utility (Section 9(5)(i)(d)), or that there is no disciplinary proceeding pending against any resolution professional proposed by the operational creditor (Section 9(5)(i)(e)), it shall admit the application within 14 days of the receipt of the application, after which the corporate insolvency resolution process gets triggered. On the other hand, the adjudicating authority shall, within 14 days of the receipt of an application by the operational creditor, reject such application if the



application is incomplete and has not been completed within the period of 7 days granted by the proviso (Section 9(5)(ii)(a)). It may also reject the application where there has been repayment of the operational debt (Section 9(5)(ii)(b)), or the creditor has not delivered the invoice or notice for payment to the corporate debtor (Section 9(5)(ii)(c)). It may also reject the application if the notice of dispute has been received by the operational creditor or there is a record of dispute in the information utility (Section 9(5)(ii)(d)). Section 9(5)(ii)(d) refers to the notice of an existing dispute that has so been received, as it must be read with Section 8(2)(a). Also, if any disciplinary proceeding is pending against any proposed resolution professional, the application may be rejected (Section 9(5)(ii)(e))."

34. It is thus settled that only those pre-existing disputes which relate to the existence of debt qua quality of goods/services, or breach of representation/warranty can be considered as valid "notice of dispute" under the Code.

35. The Petitioner has relied upon the decision of *Ahluwalia Contracts (India) Limited Vs Raheja Developers Ltd. (Company Appeal (AT) (Insolvency) No. 703 of 2018)*. In that case, Demand Notice was issued on 28.04.2018 whereas the arbitration proceedings were initiated by the Corporate Debtor on 24.05.2018, i.e., subsequent to the Demand Notice. Hon'ble Appellate Tribunal held that such subsequent initiation of arbitration proceedings cannot constitute a pre-existing dispute. It was



held that the mere fact that the Corporate Debtor has disputed the claim or raised a counter claim does not amount to a pre-existing dispute in the absence of any material to show that such dispute was raised prior to the issuance of Demand Notice under Section 8(1) of the Code. The relevant paragraphs are extracted hereunder:

“20. From the aforesaid findings, it is clear that ‘claim’ means a right to payment even if it is disputed. Therefore, merely the ‘Corporate Debtor’ has disputed the claim by showing that there is certain counter claim, it cannot be held that there is pre-existence of dispute, in absence of any evidence to suggest that dispute was raised prior to the issuance of demand notice under Section 8(1) or invoice.

21. In the present case, it is not in dispute that the arbitration proceeding was initiated by the Respondent vide notice dated 24th May, 2018 i.e. after about one month from the date of issuance of demand notice under Section 8(1) which was issued on 28th April, 2018. Therefore, the ‘Corporate Debtor’ cannot rely on arbitration proceeding to suggest a preexisting dispute. There is nothing on the record to suggest that the ‘Corporate Debtor’ raised any pre-existing dispute relating to quality of work performed by Appellant. The ground of delay in execution of work cannot be noticed to deny admission of application under Section 9, the ‘Corporate Debtor’ having allowed the Appellant to execute the work and certified all the bills.

22. The Adjudicating Authority wrongly rejected the claim on the ground that the claim raised by the Appellant falls within the ambit of disputed claim. Merely disputing a claim cannot be a ground, as held by Hon’ble Supreme Court in “Innoventive Industries Ltd. v. ICICI Bank and Anr.” wherein it is observed that “claim means a right to payment even if it is disputed. The Code gets triggered the moment default is of rupees one lakh or more (Section 4).”



23. *The Adjudicating Authority also failed to appreciate that the arbitration proceeding was initiated on 24th May, 2018 i.e. much after the issuance of the demand notice under Section 8(1) on 28th April, 2018 thereby wrongly held that an arbitration proceeding is pending.*

24. *From the record as we find that the Respondent has defaulted to pay more than Rs. 1 Lakh and in absence of any pre-existing dispute, and the record being complete, we hold that the application under Section 9 preferred by the Appellant was fit to be admitted."*

36. The Petitioner has also relied on the decision in the case of *Sushil Kanugolu, Ex – Director of Corporate Debtor SR Marine Foods Pvt. Ltd. Vs. Samunnati Agro Solutions Pvt. Ltd & Ors (Company Appeal (AT) (CH) (Ins) No. 265 of 2022)* where Hon'ble NCLAT delved into the question whether an arbitration petition filed subsequent to Form-3 notice would fall within the scope of pre-existing dispute prior to issuance of Demand Notice. In that case, Demand Notice was issued on 24.06.2019 in Form-3 whereas the arbitration petition was filed by the Operational Creditor on 03.11.2020 and by the Corporate Debtor on 07.12.2020. It was held that since arbitration petition was subsequent to issue of Demand Notice, there was no pre-existing dispute. The relevant paragraphs are extracted hereunder:



“28. ..

As per section 9(5)(ii)(d) of the IBC, application under Section 8 must be rejected with notice of dispute has been received by the Operational Creditor, however, the existence of dispute and/or a suit of arbitration proceeding must be pre-existing i.e. before receipt of demand notice as settled by Hon'ble Hon'ble Supreme Court of India in Mobilox Innovation Pvt. Ltd. vs. Kirusa Software Pvt. Ltd. (Supra).

29. It is therefore, important to understand as to whether there were preexisting dispute prior to issue of demand notice or otherwise. The demand notice was issued on 24.06.2019 in Form 3. Whereas, the arbitration petition was filed by OC on 03.11.2020. CD also initiated arbitration proceeding on 07.12.2020. Thus, it is clear that both the arbitration petition filed by OC (R-1) and CD (Appellant) were later than the demand notice issued. The intervening period between issue of demand notice and arbitration petition is of more than one year and four months. Incidentally, the common arbitration award was passed on 16.04.2021.

30. Another contention of Appellant to establish pre-existing dispute is the fact that the pendency of Section 34 of Arbitration Act was acknowledged by Respondent in the 'Memorandum of Compromise Settlement' entered into CD and OC on 30.06.2021. This is also found to be an event subsequent to issue of Demand Notice.

31 . From the series of events, it is clear that the arbitration petition as well as settlement memo were subsequent to issue of demand notice. As we have already discussed earlier in terms of legal provision of the IBC as well as the relevant decision of the Hon'ble Supreme Court, pre-existing dispute can be considered only if it is pre dated then the date of demand notice which is not the case here. As such the Learned Adjudicating Authority was right, we do not find any pre-existing dispute and therefore, Section 9 application was maintainable.

37. In the present case, the Petitioner has demonstrated the supply of raw material and raising of invoices to the Corporate Debtor for Rs.4,38,29,097/- which were duly acknowledged. The Petitioner has also reconciled the accounts by adjusting the value of finished goods



supplied by the Corporate Debtor (Rs.8,40,84,840.87) and has established that still there is an outstanding amount of Rs.5,34,55,340/-. The same is supported by NeSL authentication.

38. The Petitioner is the trader and manufacturer of textiles while the Corporate Debtor was engaged in yarn manufacturing with spindles in its mills at Dindigul, Nedungadu and Karaikal. They entered into a Buyback Agreement dated 01.07.2021 having two prior agreements dated 15.08.2018 and 15.08.2019 for a period of 60 months. As per the agreement, the Operational Creditor / Petitioner was to provide raw material to the Corporate Debtor and the Corporate Debtor was to provide the finished goods/yarn. The Operational Creditor / Petitioner supplied the raw material to the Corporate Debtor from 31.03.2023 to 07.11.2023 against which it raised the invoices for Rs.4,37,51,654/- It also provided financial assistance to the Corporate Debtor for day-to-day operations of the mill, since the Corporate Debtor was experiencing financial distress and was in continuous need of funds and support. As per the agreement, to facilitate easy movement of goods and for accounting convenience, the Operational Creditor / Petitioner used to raise invoices for the raw material



supplied at an actual rate with GST and the Corporate Debtor at the time of despatch of the processed goods, used to raise the invoices at the actual cost of processing plus cotton cost as per the invoice of the Operational Creditor / Petitioner along with applicable GST. Meaning thereby, the finished goods were costlier than the raw material thus attracting higher GST. The difference in the GST was reimbursable as per Clause F-8 of the agreement. The difference was to be paid on or before 20th of the subsequent month to the GST Department. Relevant terms and conditions of the agreement dated 01.07.2021 are reproduced below:

G-4 During the tenure of this agreement the 'MILL' shall reserve and make available the required Spindles as mentioned in (G-1) clause for manufacture of yarn in the Manufacturing units, Staff and all Facilities at 'B' Mills at Nedungadu exclusively for the manufacture of yarn as per the requirement of NFL

G-5 During the tenure of this agreement 'MILL' will neither undertake any activity of Manufacturing Yarn on their Own Account nor for Any Others in the allotted spindles & also NFL Products as mentioned in (G-1) clause in 'B' Mills at Nedungadu. However, by prior written consent of 'NFL', 'MILL' may undertake manufacturing either on Own Account or for Any Others.

R-3 'NFL' shall raise invoice for the Raw Materials supplied to 'MILL' for manufacture and 'MILL' shall not deal or otherwise remove the material supplied by 'NFL' in any manner whatsoever without written authority from 'NFL'.

R-5 As Cost of unloading of Raw materials at manufacturing unit premises shall be borne by 'MILL'.



R-8 Raw Material is to be supplied by "NFL to 'MILL' without any interruption even if there happens to be unsold-Finished Goods at the manufacturing unit or at 'NFL' warehouses

F-1 It is agreed that "MILL" will pack the material as per specifications and dispatch the finished goods as per instructions of 'NFL

F-2 The actual packaging cost shall be borne by 'NFL". The waste generated during the process shall be sold by the 'MILL' with prior written consent of 'NFL'. The consideration of the waste sales shall be credited and/or adjusted to 'NFL' account by 'MILL'

F-3 Cost of leading and transportation of yarn from manufacturing unit premises shall be borne by 'NFL'

F-4 In the case of Power cuts, curbs and shutdowns, 'MILL' shall obtain alternate supply through alternate sources (excluding monthly scheduled shutdowns and during Force Majeure Conditions). Yarn price is agreed upon by both parties based on State Government Electricity Board tariff on the date of agreement. In case of any increase in power tariff, the yarn price is to be increased accordingly

F-8 Goods and Services Tax (GST): Both parties will raise GST Invoice to each other. Any revision in the above said taxes (GST) will be implemented as per Government Notification. 'NFL understands that there would be an increase (difference) in GST payable between the Raw Material Invoice & Finished Goods Invoice due to the in-built value addition charges. Therefore, 'NFL' agrees to make payment to 'MILL' for the above said GST difference whilst making payment for the Sale Invoices raised by 'MILL. Refer (P-2) & (P-4) clause for details. In summary, 'NFL' agrees to compensate 'MILL' for any difference in GST credit availed against Yarn Invoice vs. GST paid against Raw Material Invoice

F-10 With reference to the above clauses (F-8 & F-9), In case there is a difference in Taxes for any Raw Material Finished Goods or Stock In-process Invoiced before the Government Notification (either in transit or at the manufacturing premises) 'NFL' agrees to undertake any such liability (prospective or retrospective)

39. The Petitioner has tabulated the outstanding invoices as Annexure-8 raised with the Corporate Debtor for a period from



31.03.2023 till 07.11.2023 for a sum of Rs.4,38,29,097/- enclosing the invoices (Page 55 to 74). It has filed the authorisation issued by the NeSL authenticating the amount in default as Rs.5,34,55,340/- and date of default as 16.04.2023.

40. In the present case, Demand / Statutory Notice was issued on 13.01.2024. It was received and replied by the Corporate Debtor on 17.01.2024 and 26.01.2024 raising the dispute. It was stated that the Petitioner is entitled to the return of goods only after clearing the dues of the mill. It was stated that there was a substantial increase in the electricity and labour cost overrun over the last five years.

41. A perusal of the mail communications shows that the mails relate to clearing of dues of the GST Department only. There is no correspondence to indicate that the Petitioner had an outstanding liability towards the Corporate Debtor or it was liable to pay increase towards electricity charges / labour wages as no such demand was ever raised by the Corporate Debtor during the aforesaid period. Further, no notification has been placed by the Corporate Debtor to show that the electricity charges or the labour wages had increased



during the said period which the Operational Creditor was liable to reimburse to the Corporate Debtor.

42. In the instant case, in reply to the petition, the Corporate Debtor has given the details of invoices raised after sending the yarn back to the Petitioner. The details show that during the period from 03.04.2023 till 06.11.2023, the Respondent had supplied the finished / yarn for Rs.8,40,84,840.87. It did not dispute the receipt of raw material from the Petitioner for a sum of Rs.4,38,29,097/-. In the rejoinder, the Petitioner has given a tabulation after reconciliation of account from 01.04.2023 till 30.11.2023 which shows that the said amount claimed by the Respondent was adjusted in the outstanding amount of Rs.13,82,77,192/- as referred in para-11 *supra* meaning thereby that the amount claimed by the Respondent was adjusted and still there was an outstanding payable by the Corporate Debtor, i.e., Rs.5,34,55,340/-. There are specific averments in the notice and the petition that the Corporate Debtor retained the raw materials and did not make the payments. It was for this reason, the present petition has been filed.



43. We are in agreement with the contention of Learned Counsel for the Petitioner that no dispute existed as to quantity / quality of the material prior to sending of the notice in Form-3. The dispute has been raised for the first time by the Corporate Debtor in the reply to the notice.

44. As regards initiation of Arbitration Proceedings, the Demand Notice was issued on 13.01.2024. The notice invoking the Arbitration Clause was issued on 16.02.2024 i.e., much after the issuance of Demand Notice in Form-3. Admittedly, the Arbitrator has been appointed and arbitral proceedings have commenced where the parties have filed the claims and the counter claims but initiation of arbitral proceedings subsequent to despatching of notice in Form-3 would not come in the way of initiating insolvency proceedings against the Corporate Debtor in view of the law laid down in the case of *Ahluwalia Contracts (India) Ltd. v. Raheja Developers Ltd.* and *Sushil Kanugolu v. Samunnati Agro Solutions Pvt. Ltd., supra* where it was held that any proceedings initiated after the Demand Notice cannot be treated as evidence of a pre-existing dispute. These subsequent steps taken by either party, cannot retrospectively create a dispute so as to



defeat the statutory right of the Operational Creditor to maintain a petition under Section 9 of the Code.

45. As regards contentions that there is a discrepancy in the amount of debt in the notice and the petition, perusal of the statements show that the debt amount exceeds the threshold limit of Rs.1,00,00,000/- which is also acknowledged by the Corporate Debtor in the mail communication dated 08.09.2023. The raw material supplied to the Respondent pertains to the period from 31.03.2023 to 07.11.2023 for a sum of Rs.4,37,51,654/-. An interest @ 18% per annum has been calculated upto 13.01.2024 which comes to Rs.36,12,812/-, total amounting to Rs.4,73,64,466/-. In the notice dated 13.01.2024, the same amount has been mentioned i.e. Rs.4,73,64,466/-. The additional amount of Rs.95,50,095/- as claimed in the petition is a fund towards the working capital carrying an interest of 24% per annum which is not an operational debt. That being the position, there is no mismatch in the amount stated in the notice and the petition and cannot be construed as dispute.



46. Applying the ratio of the aforesaid decisions, we are of the view that the alleged dispute raised by the Corporate Debtor is not a pre-existing dispute in terms of the Code. The disputes raised are either unsupported by evidence or are the subsequent developments post-issuance of the statutory notice.

47. Accordingly, the defence of the Corporate Debtor fails and does not fall within the category of pre-existing dispute as described in *Mobilox Innovations supra* and does not merit rejection of the petition.

48. In continuum, the Hon'ble Supreme Court in various landmark judgements has reiterated that the Adjudicating Authority is merely to see the records and other evidence produced and satisfy itself that a default has occurred in the cases relating to Section 7 and Section 9 of IBC. This Tribunal is of the considered view that there is an "existence of a debt and default" and the same is sufficient to trigger the CIRP against the Corporate Debtor herein Viz., Soundararaja Mills Limited.

49. The Petitioner has also clarified the date of default. After setting of the invoices on FIFO, the first invoice which came to be in default was the one raised on 31.03.2023. As per the terms of the invoice, the



payment was to be made within a period of 15 days from the date of invoice. Corporate Debtor failed to supply the finished goods for the raw material supplied and clear the pending invoices for the period from 31.03.2023 to 07.11.2023 as per the terms of the agreement. Hence, 15 days to make payment for the invoice dated 31.03.2023, would be 15.04.2023 and the date of default started running from the next date i.e. 16.04.2023. Default as per Section 3(12) means non-payment of debt when whole or any part or instalment of the amount of debt has become due and payable and is not paid by the debtor as the case may be. The date of default assumes importance only for the purpose of computing limitation to institute the petition which is not in question in the present case. Hon'ble NCLAT in the case of State Bank of India *supra*, observed as under:

15.1 A distinction between due of arising of cause of action for filing a petition under Sec. 7.9 or Sec. 95 IBC and the date relevant for computation of limitation is now required to be understood. As is well known cause of action (to understand it better; cause for an action) are the bundle of facts which are required to be proved by a litigant to succeed in an action. So far as the law of limitation is concerned, it does not act on the cause of action, but acts on the right to maintain an action – it acts on the remedy. Thus, even though there may be a cause for initiating an action, the action can be instituted till the last date on which limitation prescribed for initiating the intended action intervenes.



15.2 *In the context of a CIRP or a PIRP, for initiating an action, the creditor is required to establish two facts which provides the cause for initiating it: existence of a debt and the default in repaying it. The default in paying the debt, therefore, provides one of the facts constituting the cause of action for initiating any of these proceedings. The date of default which is required to be provided in Para IV of a petition under Sec. 7 or 9 or Part III of a petition 95 only indicates the date on which one of the facts constituting the cause of action has arisen. As earlier stated, limitation for initiating is CIRP or a PIRP is not about constituting a cause of action, fr about enforcing a cause of action. Therefore, the date of commencement of limitation need not necessarily be the same, and it depends on the facts of each particular case. To explain, if the IBC has not prescribed any Form of pleadings, or if it had suggested that it may assume the form of a plaint, then the factum of default in repaying the debt would have to be indicated as one of the facts constituting a cause of action and so is the date as to when this fact has happened. Merely because the IBC has prescribed a Form of pleading, that does not ipso facto imply that the date of default in paying the debt and the date of commencement of limitation for commencing a CIRP or PIRP should not be different. And, this distinction should neither be lost sight of nor should they be confused."*

50. In the present case, the Petitioner has fulfilled the twin conditions of debt and default by the Corporate Debtor. Considering the above, we agree with the contention of the Petitioner that it was not incumbent upon the Petitioner to wait until the last invoice to become due to calculate the date of default. There are e-mail communications issued by the Corporate Debtor as referred above confirming the balances payable by the Corporate Debtor (page-86 and 87 of rejoinder) which exceeds the threshold of Rs.1.0 Crore to maintain a



petition under Section 9 of IBC. The reconciliation of ledger statements also demonstrate a sum of Rs.4,44,36,678/- due and pending as on 30.09.2023 which is more than Rs.1.0 Crore i.e. the threshold. The acknowledgment was through mails which was sent from the e-mail ID of the Corporate Debtor. There cannot be any question of signature or authentication on the said mails when generated from the e-mail ID of the Corporate Debtor.

51. In the light of above discussions, we admit the petition and initiate the Corporate Insolvency Resolution Process against the Corporate Debtor, Soundararaja Mills Limited.

52. The Operational Creditor has proposed the name of Shri. Nagalingam Muthiah for the appointment of the Insolvency Resolution Professional. We therefore appoint **Shri. Nagalingam Muthiah having Regn. No: IBBI/IPA-001/IP-P00774/2017-2018/11347, with AFA valid up to 31.12.2025 (e.mail:mnaga2050@gmail.com)** as the “Interim Resolution Professional” subject to the condition that no disciplinary proceedings are pending against such an Interim Resolution Professional named and disclosures as required under IBBI



(Insolvency Resolution Process for Corporate Persons) Regulations, 2016 are made within a period of one week from the date of this order. The IRP appointed shall take in this regard such other and further steps as are required under the Statute, more specifically in terms of Section 15,17,18 of the Code and file his 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.

53. 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;*

54. 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.*

55. 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.

56. The Operational Creditor is directed to pay a sum of **Rs.3,00,000/- (Rupees Three Lakhs 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.

57. Based on the above terms, the Petition **CP/IB/175(CHE)/2024** stands **admitted** in terms of Section 9(5) of IBC, 2016 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 who is figuring in the list of Resolution Professionals forwarded by IBBI 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.

Sd/-
VENKATARAMAN SUBRAMANIAM
MEMBER (TECHNICAL)

Sd/-
SANJIV JAIN
MEMBER (JUDICIAL)

Suguna