

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

Company Appeal (AT) (Insolvency) No. 931 of 2024

**[Arising out of the Impugned Order dated 18.04.2024 passed by the
Adjudicating Authority, National Company Law Tribunal, New Delhi
Bench in C.P. (IB) No. 722/ND/2021]**

In the matter of:

M/s. Ambro Asia Private Limited

Registered Office at:

16/17, S.F, LSC Road,
Opposite ESPN Sports Madangir,
New Delhi – 110062

Email ID: n.tomar@ambroasia.it

CIN: U7414DL2007PTC165276

.... Appellant

Versus

1. M/s. Unox S.P.A

Registered Office at:

Via Majorana 22,
35010 Cadoneghe (Padua) – Italy
Email ID: info@unox.com

2. Mr. Piyush Moona

Interim Resolution Professional

Reg. No. IBBI/IPA001/IP-P00990/2017-18/11630

.... Respondents

Present:

For Appellant : Mr. Manoj Swarup, Mr. Abhishek Swarup and Mr. Chetan Sharma, Advocates.

For Respondent : Mr. Rahul Chitnis, Mr. Savinder Singh and Mr. Parth Awasthi, Advocates for R1.

Mr. Gaurav Joshi, Advocate for RP/R2 a/w Mr. Piyush Moona, RP/ R2 in Person.

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

Per: Barun Mitra, Member (Technical)

The present appeal filed under Section 61 of Insolvency and Bankruptcy Code 2016 (**'IBC'** in short) by the Appellant arises out of the Order dated 18.04.2024 (hereinafter referred to as **'Impugned Order'**) passed by the Adjudicating Authority (National Company Law Tribunal, New Delhi Bench-VI) in C.P. (IB) No. 722/ND/2021. By the impugned order, the Adjudicating Authority has admitted the Section 9 application filed by Operational Creditor-Unox S.p.A and admitted the Corporate Debtor-Ambro Asia Pvt. Ltd. into the rigours of CIRP. Aggrieved by the impugned order, the present appeal has been preferred by the suspended director of the Appellant.

2. Coming to the brief background of the case at hand, we notice that the Operational Creditor-Unox S.p.A (**"Unox"** in short) which was engaged in the manufacture and supply of professional ovens was approached by Ambro Asia S.r.L for helping in the expansion of their business in the Indian market. Ambro Asia S.r.L entered into negotiations with Unox thereafter and an Agreement was entered into by both parties on 20.02.2017 in Italy. The Agreement was to be valid for a duration of three years from 10.03.2017 to 28.02.2020. Put in broad terms, Ambro Asia S.r.L was to receive fixed remuneration as well as commission on sales executed. Since the Operational Creditor did not have any representative company in India or any warehousing facility, Ambro Asia S.r.L suggested that Operational Creditor-Unox could use their India based company-Ambro Asia Pvt. Ltd. to sell their goods. The Operational Creditor-Respondent

No.1 had started sending goods under invoices to Appellant/Corporate Debtor-Ambro Asia Pvt. Ltd. In terms of the invoices raised, payment was required to be made within 180 days of the issue of invoices and in the event of default in making timely payment, simple interest @ 15% p.a. was leviable. The Corporate Debtor had made part payments against the invoices raised by the Operational Creditor. As payment in respect of six invoices remained outstanding, the Operational Creditor raised a Demand Notice under Section 8 of IBC on 09.07.2020 for a principal amount of Euro 1,28,204.70 and interest amount of Euro 20,850/- totalling Euro 1,49,090.70. The Corporate Debtor had instituted a commercial suit during December 2020 before the District Court, Greater Noida which was however filed after receipt of the Section 8 Demand Notice by the Corporate Debtor. Not having received any payment from the Corporate Debtor, the Operational Creditor filed a Section 9 application under IBC. The Corporate Debtor contended that the operational debt raised by the Operational Creditor was disputed. However, the Adjudicating Authority on finding that debt and default above the threshold limit stood met and the disputes raised by the Corporate Debtor not being pre-existing disputes, admitted the Section 9 application. Assailing the impugned order admitting the Section 9 application, the present appeal has been preferred by the suspended director of the Appellant.

3. Shri Manoj Swarup, Ld. Advocate for Appellant submitted that the Operational Creditor had filed the Section 9 application suppressing before the Adjudicating Authority that their relationship with the Corporate Debtor was governed by the Agreement dated 20.02.2017. It was pointed out that the

Agreement of 2017 was executed between their counterpart registered in Italy i.e. Ambro Asia S.r.L with the Operational Creditor by which Ambro Asia S.r.L. was to promote the conclusion of sales of the Operational Creditor's products with various customers for which they were to receive payment of the respective commissions from the Operational Creditor in terms of the Agreement. Ambro Asia S.r.L suggested that Operational Creditor-Unox could use their India based company-Ambro Asia Pvt. Ltd. to sell their goods which was accepted by Unox. It was asserted by the Corporate Debtor that the ovens received by them from the Operational Creditor was kept in their warehouse and only after the ovens were sold by the various dealers who had been selected with the consent and satisfaction of the Operational Creditor that payment was to be made to the Operational Creditor and that too after realising the payments from the dealers. Thus, the Corporate Debtor was not the purchaser but the Operational Creditor had misrepresented before the Adjudicating Authority that their relationship with the Corporate Debtor was a simple buyer and seller relationship based on invoices. This crucial aspect escaped notice of the Adjudicating Authority which has led to the erroneous impugned order admitting the Section 9 application. It was further asserted that in the case of a running account where the accounts are yet to be reconciled and settled and where the Operational Creditor had themselves agreed to take back unsold ovens, the claim of outstanding debt by the Operational Creditor was not tenable.

4. Assertion was also made that there were several pre-existing disputes between the two parties and hence the Section 9 application was clearly not maintainable. It was pointed out that the Operational Creditor had dishonestly

stopped paying Ambro Asia S.r.L. which led to an injunction suit filed in Padua, Italy wherein the suit was decreed in favour of Ambro Asia S.r.L.. As this suit was in respect of the same Agreement under which Appellant was rendering services to the Operational Creditor, hence this suit signified a pre-existing dispute. However, the Operational Creditor concealed this pre-existing dispute between the parties from the Adjudicating Authority. It was also asserted that Section 9 of IBC was filed as a counter-blast to the injunction suit and to harass the Appellant so as to dissuade him from claiming commission on sales from them. Further the Operational Creditor was dishonestly trying to get its own company incorporated in India to hijack the entire network of dealers created by the Appellant during the period of continuance of the Agreement. This tantamount to breach of exclusivity which had been provided for in the Agreement and for amicable settlement of this dispute, the Operational Creditor agreed to buy-back all the unsold stock of ovens on which commitment they later reneged. This clearly amounted to be a pre-existing dispute. In addition, a commercial suit was also filed by the Appellant against the Operational Creditor in the Commercial Court at Greater Noida which also signified a pre-existing dispute. Attention was adverted to the judgement of the Hon'ble Supreme Court in ***Mobilox Innovations Pvt. Ltd. Vs Kirusa Software Pvt. Ltd. (2018) 1 SCC 353*** wherein it has been held that as long as a dispute truly exists in fact and such a dispute is not spurious or illusory, the Adjudicating Authority must reject the Section 9 application. However, the Adjudicating Authority erroneously admitted the Section 9 application inspite of genuine pre-existing disputes between the two parties.

5. It was further submitted by the Corporate Debtor that the sole purpose for filing the Section 9 application was recovery of debt which is impermissible in terms of the judgement of the Hon'ble Supreme Court in its judgment in **S.S. Engineers Vs Hindustan Petroleum Corporation Ltd. in Civil Appeal No. 4583 of 2023** wherein it has been held that the object of IBC is not to penalise solvent companies for non-payment of disputed dues claimed by the Operational Creditor. Attention was also drawn to the judgment of this Tribunal in **Umesh Saraf Vs Tech India Engineers Pvt. Ltd. in CA(AT)(Ins) No. 548 of 2020** wherein it has been reiterated that IBC is a beneficial legislation which is intended to put the Corporate Debtor on its feet and is not a money recovery legislation for the creditors and therefore it was contended that the impugned order deserves to be set aside.

6. Refuting the contentions of the Appellant, Shri Rahul Chitnis, Ld. Advocate representing the Operational Creditor contended that in terms of the Agreement between them and Ambro Asia S.r.L, the latter was to act as a commercial point of reference in India to promote the sale of ovens manufactured by them. Ambro Asia S.r.L had committed to promote the sales of the product of the Operational Creditor in the Indian market upon payment of fixed remuneration and commission on the executed sale and the Operational Creditor had agreed to use the Indian company of Ambro Asia S.r.L i.e. Ambro Asia Pvt. Ltd. for the purpose of creating a local warehouse and selling ovens in the market. While Ambro Asia S.r.L promoted the sales of the products of the Operational Creditor with various customers to receive payment of the respective commissions from the Operational Creditor, it was the Corporate Debtor which

purchased the products directly from the Operational Creditor to sell it further in the market. It was asserted that the fact that the Corporate Debtor had in turn devised certain arrangement with dealers/buyers was not their concern or outlook since their transaction was with the Corporate Debtor and not with the dealers. It was vehemently denied that the Corporate Debtor was only facilitating sale and purchase between the dealers and the Operational Creditor. Submission was pressed that the Operational Creditor started sending goods under invoices from time to time as per the purchase orders received by it from the Corporate Debtor, who in turn sold the goods of the Operational Creditor. Hence the relationship between the Operational Creditor and the Corporate Debtor was that of a seller and buyer based on invoices. The application under Section 9 was filed by them based on six invoices for a total amount of Euro 2,13,584.50 which became due and payable after the lapse of 180 days from the date when the amount under the respective invoice fell due. The existence of debt has not been disputed. The receipt of goods by the Corporate Debtor has also not been disputed. It was added that neither in their reply dated 16.07.2020 to the notice under Section 8 IBC nor in their reply to the application under Section 9 IBC, the Corporate Debtor had disputed or denied the receipt of goods under the invoices annexed to it of 346 ovens totalling Euro 2,13,584.50 against which an amount of Euro 1,28,204.70 was outstanding and payable. Neither had the Corporate Debtor disputed the quantity or quality of the goods supplied to them by the Operational Creditor nor disputed the existence of the debt or claimed to have paid the amount due under the invoices to the Operational Creditor. Therefore, the debt which is due and payable by the Corporate Debtor

to the Operational Creditor is clearly covered by Section 5 (21) of IBC. With debt and default being established, the Adjudicating Authority committed no error in admitting the Section 9 application.

7. It was also submitted that the grounds of pre-existing disputes raised by the Corporate Debtor are frivolous and specious and cannot form sufficient basis for rejection of the Section 9 application. On the contention raised by the Corporate Debtor that there was breach of exclusivity, it was stated that the Agreement was admittedly for a period of 3 years but no exclusivity terms were ever agreed to or granted by the Operational Creditor to Ambro Asia S.r.L. The linkage of breach of exclusivity and its alleged settlement with the goodwill gesture of the Operational Creditor agreeing to buyback 25 ovens was falsely trumped up. Besides the fact that the term of the aforesaid agreement had already ended on 28.02.2020 even before the issuance of notice under Section 8 on 09.07.2020 and hence exclusivity could not be a ground of dispute, it was also argued that even otherwise if this alleged settlement couldn't be reached for some reason, it did not absolve the Corporate Debtor of its liabilities towards the Operational Creditor. It was also added that the proceedings before the Court at Italy cannot qualify as a dispute as those proceedings were not only between different parties other than the Corporate Debtor but the cause of action being unrelated to the six invoices was also different. The defence of pre-existing dispute as put forth by the Corporate Debtor was a moonshine defence and a feeble argument made in order to avoid payment of the legitimate dues of the Operational Creditor, hence, the present Appeal is liable to be dismissed.

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

9. The short point for our consideration is whether payment to the Operational Creditor is triggered in the present case giving rise to an operational debt, and if so, whether a default has been committed by the Corporate Debtor in respect of payment of such operational debt having already become due and payable and whether the said operational debt is an undisputed debt which exceeds the threshold limit.

10. To begin with, we would like to see whether any operational debt stood established qua the Operational Creditor in this case and if there was a default in the repayment by the Corporate Debtor of the said debt in the facts of the present case.

11. It is the case of the Appellant-Corporate Debtor that these invoice-based transactions were not sale-purchase transactions. In terms of the Agreement of 2017, the Corporate Debtor was to set up a warehouse to sell the Operational Creditor's products in the Indian market as a facilitator. Submission was pressed that the Corporate Debtor, therefore, did not have any direct buyer-seller relationship with the Operational Creditor. These transactions formed part of the distribution cycle created for the products manufactured by the Operational Creditor and as payments thereto were to be made by the Corporate Debtor on running account basis only after realizing the cost of the same from the dealers irrespective of the invoices raised, there was no debt owed by the Corporate Debtor. The role of the Corporate Debtor was limited to the setting up of a warehouse in India to facilitate the supply of ovens of manufactured by the

Operational Creditor through a network of dealers set up by the Corporate Debtor. The role of the Corporate Debtor was thus purely confined to the facilitation of the sales of the goods manufactured by the Operational Creditor. Even the dealers were appointed with the consent and after meeting the satisfaction of the Operational Creditor. It was asserted that the Adjudicating Authority while passing the impugned order committed an error in that it did not consider the Agreement dated 20.02.2017 executed between the Operational Creditor and Ambro Asia S.r.L. in a holistic manner. Had the terms of the Agreement been seen in its entirety, it would become clear that the relationship between the Operational Creditor and Corporate Debtor was not a simple buyer and seller relationship based on invoices.

12. Per contra, it is the case of the Operational Creditor that purchase orders were placed by on them by the Corporate Debtor basis which 346 ovens were supplied which had all been received by them without any demur or protest with regard to quality, quantity or price of the ovens supplied. The relationship between Unox-Operational Creditor and Ambro Asia Pvt. Ltd.- Corporate Debtor was that of a seller and buyer and the business dealing between the two parties was on principal-to-principal basis. The invoices also clearly show that they were drawn in the name of the Corporate Debtor by the Operational Creditor and hence it was a buyer-seller relationship between them. It was also added that the Appellant had also failed to submit any documentary proof to the contrary to substantiate that there was some understanding that the dealers had to make the payment first before the same became payable to Operational Creditor. It was incumbent on the Corporate Debtor to make good the payment and therefore the

Adjudicating Authority had not committed any error in holding that the Corporate Debtor had defaulted in clearing their outstanding dues qua the Operational Creditor.

13. When we look at the six invoices as placed at pages 160-170 of the Appeal Paper Book ("**APB**" in short), we find that the invoices were raised on the Corporate Debtor for a principal amount of Euro 1,28,204.70. The invoices issued by the Operational Creditor are clearly in the name of the Corporate Debtor. The customer address is clearly shown as Ambro Asia Pvt. Ltd. Coming to the default aspect, we find that the existence of debt has not been disputed. The receipt of goods has also not been disputed. We also notice that even in the reply to the Section 8 Demand Notice, the Corporate Debtor has nowhere categorically denied that no payment was due from them. Moreover, the Corporate Debtor cannot be seen to claim that the payments were due only when the dealers would sell these ovens. This is contrary to what is written in the footnote of the invoices that the payments have to be made by the Corporate Debtor within 180 days. We also notice provision of interest made in the invoices for delayed payment. Hence, the debt which is due and payable in the present facts of the case is clearly on part of the Corporate Debtor.

14. It was contended by the Operational Creditor that once they had supplied goods to the Corporate Debtor based on their Purchase Orders, they were not concerned or bound by any arrangement devised by the Corporate Debtor with dealers/buyers since their transaction was with the Corporate Debtor and not with the dealers. It was argued that the Corporate Debtor has only tried to create a smoke-screen to deny their liability by claiming that payments were to be made

only after realising the same from the dealers and not on the basis of invoices. It is pertinent to mention at this stage that on a pointed query made by this Bench, it was admitted by the Corporate Debtor that but for the first consignment, the practice followed for subsequent consignments was that the sale proceeds were being received by the Corporate Debtor from the dealers and payments made thereafter to the Operational Creditor after deductions of customs duty and 3% sales commission. When it is clear that invoices were raised in the name of Corporate Debtor basis purchase orders received from the Corporate Debtor; when goods were received by the Corporate Debtor and stored in their warehouse and even sale proceeds of the goods were admittedly received by the Corporate Debtor, prima facie, the Adjudicating Authority did not commit any infirmity in holding the relationship between the Corporate Debtor and Operational Creditor to be one of a simple buyer-seller relationship.

15. It is an undisputed fact that the Operational Creditor during the period 11.12.2017 to 29.04.2019 had raised six different invoices for 346 ovens. The Corporate Debtor has not disputed or denied the receipt of 346 ovens to the tune of Euro 2,13,584.50. Material on record shows that against these six invoices, only part payment amounting Euro 85,379.80 was received by the Operational Creditor in tranches and an outstanding balance amount of Euro 1,28,204.70 remained unpaid. We also notice that while releasing the part-payments, no disputes were raised by the Corporate Debtor either on the quality or quantity of goods received or on the pricing of the goods. Neither was the quantum of outstanding debt disputed. It is also noticed that the last invoice was raised by the Operational Creditor in 2019 and until 2020 when the Operational Creditor

had sent the Demand Notice, there is no evidence of any dispute which had been raised by the Corporate Debtor.

16. Hence, we do not find any error in the finding returned by the Adjudicating Authority that debt and default stood established.

17. This now brings us to the question as to whether the operational debt was encumbered in disputes which were pre-existing in nature.

18. One such ground of pre-existing dispute to which attention has been adverted to by the Corporate Debtor is the assurance which had been given by the Operational Creditor to buy back the unsold stock of 25 ovens and thereafter resiling from this commitment. It has been contended by the Appellant that the Operational Creditor and Corporate Debtor had exchanged several e-mails as placed at pages 126-128 of APB in this regard. It was pointed out that the Operational Creditor had themselves noted in their email dated 16.12.2019 that there was dispute between them which needed to be resolved. It was further pressed that the failure of the above amicable settlement between them had also been admitted by the Operational Creditor in para 27 of their rejoinder reply to the Section 9 application. Contention was pressed that all these correspondences/e-mails established beyond doubt that there was a pre-existing dispute.

19. Refuting the argument canvassed by the Appellant, it was contended by the Operational Creditor that the offer to buy back 25 ovens was made by the Operational Creditor as a goodwill gesture and that too at the request of the Corporate Debtor and on account of failure on the part of the Corporate Debtor to repay the outstanding amount. Further the very idea of buy-back only goes to

reinforce the fact that the Operational Creditor had sold the ovens to the Corporate Debtor which validates the status of the Corporate Debtor as a buyer and not a facilitator. It is vehemently contended that these e-mails cannot be construed to be a pre-existing dispute between the two parties and is only an illusory defence and therefore not a cogent ground for rejecting Section 9 application.

20. When we look at the material on record and the rival submission made by both parties, we do not find much force in the contention of the Appellant that merely because the Operational Creditor had reneged on their commitment to take back the 25 ovens which were unsold, the Section 9 application ought to have been rejected by the Adjudicating Authority. Even if it is accepted that 25 ovens were not taken back, this accounted for only 7% of the 346 ovens that had been supplied. What further stares at our face is that Euro 1,28,204.70 was still outstanding as only 60% of the outstanding dues against 346 ovens supplied had been cleared. Moreover, we find contradiction in the statements of the Corporate Debtor that the ovens were not purchased by them but only kept by them in their warehouse and in the same breath contending that the Operational Creditor had agreed to buy the ovens back. If the ovens were not sold to the Corporate Debtor, then the question of buying them back defies logic. If we accept the claim of the Corporate Debtor that they did not purchase ovens from the Operational Creditor but only kept the ovens in their warehouse and were required to pay as and when sale through the dealers would take place, it is difficult to comprehend why the Operational Creditor would need to buy back these ovens as the ovens logically remained their property though stored in the

warehouse of the Corporate Debtor. The above dispute based on mutually contradictory pleas projected by the Appellant is not convincing and this is clearly a case of moonshine dispute which is devoid of substance.

21. Another ground of pre-existing dispute raised by the Corporate Debtor was that the Operational Creditor had proceeded to get their company registered in India even before the three-year period of the Agreement of 20.02.2017 had expired. It is the case of the Corporate Debtor that in terms of the 2017 Agreement, they had been engaged as the exclusive distributor of ovens manufactured by the Operational Creditor within India including rights to import, stock, market, sell, install and provide technical support in respect of these ovens. For this reason, they had invested time and effort in creating a network of dealers for selling the ovens manufactured by the Operational Creditor. Hence the move by the Operational Creditor to get their company registered in India was a breach of exclusivity terms granted to them under the Agreement and that this development was contemporaneously protested by the Appellant-Corporate Debtor following which meetings took place and e-mails were exchanged between the two parties between 19.02.2019 and 23.02.2019. Further it has been alleged that to oust the Corporate Debtor, the Operational Creditor was trying to contact the dealers and threatening to withdraw the facility of warranty if they continued to deal with the Corporate Debtor.

22. Per contra, it is the contention of the Operational Creditor that the Corporate Debtor cannot claim exclusivity right in terms of the 2017 Agreement as this Agreement was not executed with the Corporate Debtor but with Ambro Asia S.r.L which was an entirely different juristic entity. It was also argued that

the Agreement did not prohibit them from incorporating any such company in India. The Operational Creditor also contended that the allegation made against them that they were threatening to withdraw the facility of warranty was devoid of substance as dishonouring of warranty would have spoiled their own goodwill in the market which as a commercially prudent entity the Operational Creditor would never have risked to undertake. It was added that that they were exploring the alternative of opening their own branch in India as the Corporate Debtor was conducting the business affairs in a casual manner besides causing delay in settling of payments which was proving detrimental to their commercial interests.

23. Weighing the rival submissions, we are inclined to agree with the Operational Creditor that their Agreement of 20.02.2017 was with Ambro Asia S.r.L and not with Ambro Asia Pvt. Ltd. Though both were sister concerns, however, they were independent legal entities. The terms of the said Agreement of 20.02.2017 cannot be selectively used by the Corporate Debtor to suit their convenience as they were not a signatory or executant of the said Agreement. The plea of exclusivity taken up by the Corporate Debtor basis the 2017 Agreement therefore to our mind lacks credence. In such circumstances, the bogey of violation of the Agreement with respect to exclusivity rights as a ground of pre-existing dispute appears to be frivolous and cannot be a tenable ground to establish pre-existing dispute.

24. This brings us to the two other disputes projected as pre-existing disputes. We first come to the pre-existing dispute which was claimed by the Appellant to have arisen out of the commercial suit filed in the Commercial Court at Greater

Noida. It was asserted by the Operational Creditor that the filing of the commercial suit was more of retaliatory measure by the Appellant to the Section 8 Demand Notice issued by them. Without going into issue as to whether the said suit was a counterblast to the Section 8 Demand Notice or not, we concur in the findings returned by the Adjudicating Authority that institution of a commercial suit against the Operational Creditor before the District Court, Greater Noida during December 2020 cannot be treated as pre-existing dispute since it was clearly filed after the Section 8 Demand Notice.

25. The other set of pre-existing dispute raised by the Corporate Debtor was the injunction suit dated 09.12.2019 which had been filed by Ambro Asia S.r.L against the Operational Creditor in a Court in Italy which was decreed in favour of Ambro Asia S.r.L. Submission was pressed that since the Corporate Debtor had also been rendering their services which flowed out of this Agreement and the implementation of the same Agreement had been embroiled in a suit, this was sufficient basis to substantiate the existence of pre-existing disputes.

26. Per contra, the Operational Creditor contended that these proceedings before the Court in Italy had been filed by Ambro Asia S.r.L and not by the Corporate Debtor -Ambro Asia Pvt. Ltd.. Hence the Corporate Debtor cannot rightfully claim the injunction suit proceedings between the Operational Creditor and Ambro Asia S.r.L to be a ground for rejecting the Section 9 application filed against them. Further the proceedings before the Italian Court arose out of the Agreement dated 20.02.2017 and had nothing to do with the default arising out of the six invoices against which payments were outstanding.

27. We are in agreement with the Adjudicating Authority that since Ambro Asia S.r.L and Ambro Asia Pvt. Ltd are distinct legal entities with separate corporate identities, the decree granted in the injunction suit in favour of Ambro Asia S.r.L did not qualify to be a pre-existing dispute in the present factual matrix particularly when the present Corporate Debtor was not a party in the injunction suit proceedings. Both the Ambro companies had separate legal existence being independent juristic entities, the legal dispute with one of the Ambro companies cannot be seen as a dispute with the other Ambro company. It is no less significant to note that there is no mention of the injunction suit proceedings by the Corporate Debtor while replying to the Section 8 Demand Notice. Quite clearly the Appellant has chosen to project this as a ground of dispute only as an afterthought. The subject matter of the aforementioned suit also did not pertain to adjudication of the six unpaid invoices and hence cannot be viewed as a pre-existing dispute. The two subject matters in the injunction suit and the present Section 9 application being different and distinct from each other, the proceedings before the Italian Court have been rightly held by the Adjudicating Authority not to be a pre-existing dispute.

28. Given the conspectus of facts and circumstances surrounding this case, for the reasons discussed, we are not convinced that any of the disputes raised are genuine or pre-existing. In the absence of any discernible and bonafide pre-existing dispute, admission of the Section 9 application was in no manner violative of the ***Mobilox judgement*** supra.

29. At this juncture it is noted that submission was made by the Ld Counsel of the Resolution Professional (RP) that in terms of the directions dated

13.05.2024 of this Tribunal, no resolution plan has been put to vote by the RP and that the 330 day timeline for completion of CIRP process has already expired on 13.03.2025. However, as the RP has been managing the Corporate Debtor as going concern and taken necessary steps in due discharge of duties, it was urged that payment of outstanding CIRP cost be made to the RP.

30. Basis our aforesaid discussion, we are of the view that the Corporate Debtor has defaulted in the payment of operational debt, which amount had clearly become due and payable, and further in the absence of any pre-existing dispute, we find that no error has been committed by the Adjudicating Authority in admitting the application under Section 9 of IBC and initiating CIRP. We find no merit in this Appeal. Appeal is dismissed. We further vacate the interim stay passed in terms of directions of this Tribunal dated 13.05.2024. We also grant a further period of 60 days from the date of this order to the RP to complete the CIRP process. It is also directed that outstanding CIRP cost be paid to the RP with the approval of the CoC in accordance with law. No costs.

[Justice Ashok Bhushan]
Chairperson

[Barun Mitra]
Member (Technical)

Place: New Delhi

Date: 07.01.2026

Abdul