



IN THE NATIONAL COMPANY LAW TRIBUNAL
JAIPUR BENCH

**CORAM: SHRI DEEP CHANDRA JOSHI,
HON'BLE JUDICIAL MEMBER**

**SHRI PRASANTA KUMAR MOHANTY
HON'BLE TECHICAL MEMBER**

In CP No. (IB) 29/9/JPR/2018

(Under Section 9 of the Insolvency and Bankruptcy Code, 2016 read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicatory Authority) Rules, 2016)

IN THE MATTER OF:

Mrs. Neeta Garg, Sole Proprietor of M/s Neelkanth Enterprises

Regd. Office: C-24/1, Bansi 1st

Phase, Opposite Basni Railway

Station, Jodhpur- 341021

Rajasthan

...Applicant / Operational Creditor

VERSUS

Deshlehra Metals Private Limited

Registered Office: 151, Gulab

Nagar, Jodhpur (Rajasthan)

...Respondent/Corporate Debtor

For the Applicant : Mr. Mohit Singhvi, Adv.

For the Respondent : Mr. Sandeep Kumar Singh, Adv.

Order Pronounced on: 20.02.2023

ORDER

Per: Shri Deep Chandra Joshi, Judicial Member

1. The present Application has been filed by Mr. Anil Garg, on behalf of M/s Neelkanth Enterprises ('Applicant') to initiate Corporate Insolvency Resolution Process ('CIRP') against M/s Deshlehra Metals Private Limited



(‘Respondent’/‘Corporate Debtor’) under Section 9 of the Insolvency and Bankruptcy Code, 2016 (‘Code’/ ‘IBC’) for the alleged default on the repayment of Operational Debt amounting to Rs. 23,87,252/- (Rupees Twenty-Three Lakhs Eighty-Seven Thousand Two Hundred Two Only).

2. The Respondent namely M/s Deshlehra Metals Private Limited is a Private Limited Company which was incorporated on 04.09.2009 in accordance with the Companies Act, 1956 holding CIN- U27109RJ2009PTC029805. The registered office of the Corporate Debtor is 151, Gulab Nagar, Jodhpur Rajasthan.
3. The present application has been preferred by the Applicant vide Diary No. 304/2018 dated 10.09.2018 on the basis of the following set of facts:
 - a. The Operational Creditor is involved in the business of supply of imported bearings and steel. During the course of business, the Operational Creditor got in touch with the Corporate Debtor and thereafter the Corporate Debtor started buying products from the Operational Creditor. In the series of business transactions, the Corporate Debtor became a regular customer and this turned into a continuous and recurring business relationship between the Operational Creditor and the Corporate Debtor.
 - b. The Applicant has submitted that the Corporate Debtor started buying bearings and steel from July, 2013 and thereafter continuous transactions were undertaken between the parties and the last



transaction was under taken in the month of April, 2018. The Corporate Debtor had purchased the bearing and steel amounting to Rs. 1,52,43,470/- (Rupees One Crore Fifty-Two Lakhs Forty-Three Thousand Four Hundred and Seventy Only) during the Financial Year 2017-18. The copy of the various invoices generated by the Operational Creditor from 10.08.2017 to 26.04.2018 is appended herewith and marked as Exhibit-2.

- c. Against the aforesaid amount, payment to the tune of Rs. 1,28,56,218/- (Rupees One Crore Twenty-Eight Lakhs Fifty-Six Thousand Two Hundred and Eighteen) has been made and an outstanding amount of Rs. 23,87,252/- (Rupees Twenty-Three Lakhs Eighty-Seven Thousand Two Fifty-Two Only) is still due to be paid by the Corporate Debtor. Towards the discharge of the outstanding amount, time and again it was assured by the Corporate Debtor that dues will be settled in instalments. Finally, the Operational Creditor issued notice u/s 8 of the Code to the Corporate Debtor on 05.07.2018 but no payment was made by the Corporate Debtor. Further the Applicant has preferred an affidavit stating that no notice has been given by the Corporate Debtor relating to the dispute of unpaid operational debt.
- d. The aforementioned details as reflected in Part IV of the Application are as follows:



PART IV
PARTICULARS OF OPERATIONAL DEBT

1.	Total amount of debt, details of transactions on account of which debt fell due, and the date from which such debt fell due	<u>Amount of Debt Granted:</u> Rs. 23,87,252/- (Rupees Twenty-Three Lakhs Eighty-seven Thousand Two Fifty-Two Only) together with interest @ 18% per annum from the date of arrears till realization thereof along with legal costs <u>Date from which such debt fell due:</u> The Operational Debt is due since January, 2018.
2.	Amount claimed to be in default and the date on which the default occurred	<u>Amount Claimed:</u> Rs. 23,87,252/- (Rupees Twenty-Three Lakhs Eighty-seven Thousand Two Fifty-Two Only) is due since January, 2018. In addition to the aforementioned amount an interest @ 18% per annum shall also be payable by the Corporate Debtor for each days default until the date of actual payment to the Operational Creditor along with legal costs.

- e. Subsequently, the Applicant filed an additional affidavit vide Diary No. 424/2018 dated 03.10.2018 wherein the Applicant placed the reply of the Corporate Debtor dated 03.08.2018 on record. This reply was preferred by the Corporate Debtor as a response to the demand notice served under Section 8 of the Code. The Corporate Debtor in the said letter has acknowledged the liability to the tune of Rs. 2,50,000/- (Rupees Two Lakhs Fifty Thousand). The Applicant has also filed an Affidavit of service vide Diary No. 562/2018 dated 26.10.2018.



4. Consequent to the notices issued, the Corporate Debtor preferred reply vide Diary No. 628/2018 dated 14.11.2018 stating as follows:

- a. The Respondent has dispute in respect of the amount claimed by the Applicant as goods were not delivered in the same quantity. Dispute has been raised with respect to certain bills which have been tabulated by the Corporate Debtor as follows:

List of bills where quantity (in kg) given in Invoice varies from the actual delivery (in kg) through Weigh Bridge and which was disputed			
<i>Dated</i>	<i>Invoice No.</i>	<i>Quantity according to the invoice (in KG)</i>	<i>Actual Quantity provided according to the weigh bridge (in KG)</i>
27.10.2017	17859	29035	28975
08.11.2017	17867	18188	18110
09.11.2017	17869	12584	12553
List of bills where quantity (in pcs) given in Invoice varies from the actual delivery (in pcs) through Delivery Challan which is disputed			
<i>Dated</i>	<i>Invoice No.</i>	<i>Quantity according to the invoice (in PCS)</i>	<i>Actual Quantity provided according to the delivery challan (in PCS)</i>
13.09.2017	17638	03	02
22.09.2017	17785	12	10
28.11.2017	18050	08	06
List of bills where quantity (in PCS) given in Invoice varies from the actual delivery (in PCS) through delivery (in PCS) which is disputed			
<i>Dated</i>	<i>Invoice No.</i>	<i>Quantity according to the invoice (in PCS)</i>	<i>Actual Quantity provided (in PCS)</i>
10.08.2017	17625	7	6
11.08.2017	17627	3	2
29.08.2017	17713	3	2
04.09.2017	17732	3	2



- b. The Corporate Debtor has also submitted that a recovery suit bearing No. 104 of 2018 has been filed on the basis of same alleged cause of action for the part payment before the Hon'ble Civil Judge Senior Division, Jodhpur by the Applicant. Further the Respondent has deposited a Demand Draft of Rs. 2,50,000/- (Rupees Two Lakh Fifty Thousand) as security deposit in the said civil matter. An FIR was also preferred by the Applicant against the Respondent with the Police Station at Jodhpur on the basis of the same set of facts as averred in the present petition; in which the Hon'ble High Court of Judicature at Jodhpur has stayed the arrest of the accused/respondents.
- c. The Corporate Debtor contends that the demand notice was preferred by the Applicant on 05.07.2018 and received by the Corporate Debtor on 10.07.2018. Thereafter, the Corporate Debtor contacted the Applicant stating that the amount is disputed and the Applicant in turn promised not to proceed further on the basis of the said demand notice, hence, the Demand Notice was not replied to by the Corporate Debtor within 10 days. Later when the Corporate Debtor noticed the conduct of the Applicant, it preferred a reply notice on 03.08.2018 which came to be delivered on 04.08.2018. The delay of 12 days was unintentional.
- d. The Corporate Debtor has also stated that the bills raised were inclusive of the amount of the goods/particularly the bearings which were not delivered to the Corporate Debtor. The delivery challans prove that the



goods were not delivered in the in the quantity as mentioned at the time of order. Also, in respect of goods which were delivered, some were defective and the same was conveyed to the Applicant and accordingly the payment was made. The copies of the above said bills/ invoices, delivery challans and weight bridges are hereby annexed as Exhibit-B.

5. The Applicant filed its rejoinder vide Diary No. 657/2018 dated 20.11.2018 submitting the following:

- a. With respect to the filing of the recovery suit to the tune of Rs. 2,50,000/- (Rupees Two Lakh Fifty Thousand) before the Civil Judge, Senior Division, Jodhpur, Rajasthan, it has been submitted that for discharging partial liability a cheque of Rs. 2.50 Lakh was handed over to the Applicant which was later dishonoured and subsequently a legal notice was furnished to the Corporate Debtor. In reply to the said notice, a liability with respect to Rs. 2.50 Lakh was admitted by the Corporate Debtor and on the basis of the admission of liability, the above referred suit was preferred for recovery of Rs. 2.50 Lakh. Regarding the FIR, the Applicant has submitted that the same was lodged on a completely separate premise against the Directors of the Corporate Debtor and one Mr. Bhavesh Jain, who is the son of the Director.
- b. It has been asserted that an application under Order 38 Rule 5 of the Code of Civil Procedure, 1908 was filed for attachment of the property



of the Corporate Debtor as the Directors of the Respondent Company were about to flee away. In the reply to the said application, the Corporate Debtor averred that it has already made the payment whereas in reply to the statutory notice, the Corporate Debtor admitted to make payment of Rs. 2,50,000/- (Rupees Two Lakh Fifty Thousand Only). The correctness of the delivery challan has also been questioned.

- c. While relying on Section 8 of the Code, the Applicant asserts that the reply to the demand notice was furnished after almost one month from receiving the demand notice. According to the Applicant, there is no bonafide dispute between the parties to the case.
6. The Corporate Debtor vide Diary No. 254/2019 dated 11.02.2019 filed the Copy of the Complaint filed before the District Court, Jodhpur under Order 38 Rule 5 of the Civil Procedure Code, 1908 numbered as Civil Suit No. 69/2018 wherein the suit was filed by Ms. Neeta Garg as the sole proprietor of M/s Neelkanth Enterprises. Meanwhile, the Civil Original Suit bearing No. 75/2018 (titled as *Neelkanth Enterprises vs. Deshehra Metals P. Ltd.*) was concluded vide Decree dated 14.03.2019 and the same has been placed before us vide Diary No. 600/2019 dated 10.04.2019.
7. It was observed vide Order dated 03.09.2019 that the Company Petition was filed in the name of M/s Neelkanth Enterprises, a Sole Proprietary Firm where the Sole Proprietor is Ms. Neeta Garg. The Applicant sought time to make appropriate amendment in the memo of parties as Sole Proprietary



Firm has no locus-standi to file the present Application and the same was granted. The amended memo of parties was filed vide Diary No. 1958/2019 dated 18.09.2019 and the name of the proprietor Ms. Neeta Garg was replaced in place of the M/s Neelkanth Enterprises, a proprietary concern.

8. Vide Order dated 17.01.2020, this Authority had directed the Corporate Debtor to submit the payment proof invoice wise and the Applicant was directed to provide all the invoices to the Corporate Debtor's counsel. The Applicant vide Diary No. 384/2020 dated 19.02.2020 placed an additional affidavit on record wherein the Applicant undertook that copies of all the invoices were provided to the Corporate Debtor vide e-mail dated 21.01.2020 along with GST returns filed against the said invoices. The copies of GST returns have been annexed with the said Affidavit as well. Further Applicant also filed an Authorisation Letter on behalf of Mr. Anil Garg vide Diary No. 511/2020 dated 13.03.2020.
9. The Corporate Debtor has vide Diary No. 871/2022 dated 23.03.2022 filed an affidavit clarifying the payment made to the Applicant by the Corporate Debtor. It was submitted in the letter that a total of 18 invoices starting from Invoice No. 17625 dated 10.08.2017 to Invoice No. 18050 dated 28.11.2017 were received by the Corporate Debtor. It has been contended by the Corporate Debtor that the Applicant has mentioned an amount of Rs. 18,97,995/- (Rupees Eighteen Lakh Ninety-Seven Thousand Nine Hundred and Ninety-Five Only) as opening balance dated 01.04.2017



without any proof; the said amount is not due amount. Further, a table has been annexed with the Affidavit as per which the total amount due to be paid to the Applicant against 18 invoices was Rs. 1,21,95,455/- (Rupees One Crore Twenty-One Lakh Ninety-Five Thousand Four Hundred and Fifty-Five) and the Corporate Debtor has paid an amount of Rs. 1,23,66,218/- (Rupees One Crore Twenty-Three Lakh Sixty-Six Thousand Two Hundred and Eighteen Only) which is also seen in the Ledger of the Applicant; the Corporate Debtor has paid an excess of Rs. 1,70,763/- (Rupees One Lakh Seventy Thousand Seven Hundred and Sixty-Three Only).

10. The Applicant filed a reply to the said affidavit vide Diary No. 2818/2022 dated 20.09.2022 stating that an opening balance of Rs. 23,97,995/- (Rupees Twenty-Three Lakh Ninety-Seven Thousand Nine Hundred and Ninety-Five Only) as on 01.04.2017 is still due to be paid. The Applicant also annexed ledger account for the period commencing from 01.04.2013 to 31.03.2017 which shows closing balance to the tune of Rs.18,97,995/- (Rupees Eighteen Lakh Ninety-Seven Thousand Nine Hundred and Ninety-Five Only).
11. The Corporate Debtor has filed Written Submissions vide Diary No. 3701/2022 dated 08.12.2022 wherein it has been stated that the Applicant (i) has filed a civil suit numbered as 104/2018 before Civil Judge Senior Division, Jodhpur for the amount of Rs. 2,50,000/- against invoice No. 18050; (ii) has lodged an FIR with the Police Station at Jodhpur under



Section 420,406 and 417 of the Indian Penal Code, 1860 in which arrest has been stated by the Hon'ble High Court and later final report was filed by the Investigating Officer closing the case on the basis of dispute in Civil Nature; and (iii) has filed present application suppressing the aforesaid proceedings. Further the Corporate Debtor states that there is dispute between the parties as the goods were not delivered in the same quantity as mentioned in the invoices.

12. The Applicant filed its written arguments vide Diary No. 3774/2022 dated 20.12.2022 opposing the contention of the Corporate Debtor and submitted that the challans submitted are fabricated and have been presented merely to defeat the CIRP of the Corporate Debtor. Further the Applicant has relied on certain judgments which are not reiterated herein for the sake of brevity. Further, an amount of Rs. 2,50,000/- (Rupees Two Lakh Fifty Thousand Only) has not been realised by the Applicant, hence the Part IV of the Application has not been amended.
13. The Applicant filed an Additional Affidavit vide Diary No. 143/2023 dated 17.01.2023 clarifying that the Summary Suit preferred by the Applicant before Senior Civil Judge, Jodhpur claiming an amount of Rs. 2,50,000/- (Two Lakh Fifty Thousand) was filed on 25.09.2018 and the invoices against which amount has been claimed in the present petition were never claimed by the Applicant before any other court. The Civil Suit was claiming an amount of Rs. 2,50,000/- (Two Lakh Fifty Thousand) on the basis of the



cheque issued by the Corporate Debtor. The suit has been decreed on 14.03.2019.

14. We have heard the Ld. Counsels for the parties and perused the averments made in the application, reply, rejoinder, written submissions and the documents enclosed with the application.
15. First and foremost, we see that the registered office of the Corporate Debtor is situated in Jodhpur which falls within the bounds of this Authority and secondly, it has been contended that the amount is due since January, 2018 and the application came to be filed on 10.09.2018, the same is within the limitation prescribed, hence this Authority has jurisdiction to adjudicate the present matter.
16. Before we delve in the matter at hand it is important to refer to the ingredients which have to be satisfied for the present matter to be admitted under Section 9 of the Code. In *Mobilox Innovations Private Limited Vs Kirusa Software Private Limited*, para 34, the Hon'ble Supreme Court laid down what the Adjudicating Authority has to examine in an Application under Section 9. Para 34 is as follows: -

“34. Therefore, the adjudicating authority, when examining an application under Section 9 of the Act will have to determine:

- (i) Whether there is an “operational debt” as defined exceeding Rs 1 lakh? (See Section 4 of the Act)*
- (ii) Whether the documentary evidence furnished with the Application shows that the aforesaid Debt is due and payable and has not yet been paid? and*
- (iii) Whether there is existence of a dispute between the parties or the record of the 15 Company Appeal (AT) (Insolvency) No. 256 of 2021 pendency of a suit or arbitration*



proceeding filed before the receipt of the demand notice of the unpaid operational Debt in relation to such dispute? If any one of the aforesaid conditions is lacking, the Application would have to be rejected. Apart from the above, the adjudicating authority must follow the mandate of Section 9, as outlined above, and in particular the mandate of Section 9(5) of the Act, and admit or reject the Application, as the case may be, depending upon the factors mentioned in Section 9(5) of the Act.”

17. Therefore, to initiate CIRP in the present matter the aforementioned conditions have to be satisfied. At this juncture it is also important to quote the judgment of the Hon’ble Supreme Court in *M/s S.S. Engineers & Ors. vs. Hindustan Petroleum Corporation Limited*, which reads as follows:

“32. On a reading of Sections 8 and 9 of the IBC, it is patently clear that an Operational Creditor can only trigger the CIRP process, when there is an undisputed debt and a default in payment thereof. If the claim of an operational creditor is undisputed and the operational debt remains unpaid, CIRP must commence, for IBC does not countenance dishonesty or deliberate failure to repay the dues of an Operational Creditor. However, if the debt is disputed, the application of the Operational Creditor for initiation of CIRP must be dismissed.”

18. It is seen that the Applicant in Part IV is claiming a default of Rs. 23,87,252/- (Rupees Twenty-Three Lakh Eighty-Seven Thousand Two Hundred and Fifty-Two Only) against the Corporate Debtor as the Corporate Debtor has purchased bearings and steel amount to Rs. 1,52,43,470/- (Rupees One Crore Fifty-Two Lakh Forty-Three Thousand Four Hundred and Seventy Only) and only made payment to the tune of Rs. 1,28,56,218/- (Rupees One Crore Twenty-Eight Lakhs Fifty-Six Thousand Two Hundred and Eighteen Only). The Applicant has relied on the various invoices annexed with the



application to support its claim and along with it the Ledger of the Corporate Debtor's company maintained by the Applicant. The Applicant has attached as many as 18 invoices starting from invoice no. 17625 dated 10.08.017 to invoice no. 18050 dated 28.11.2017 amounting to a total of Rs. 1,21,95,455/- (Rupees One Crore Twenty-One Lakh Ninety-Five Thousand Four Hundred and Fifty-Five Only). The ledger as appended with the Application displays an opening debit balance to the tune of Rs. 18,97,995/- (Rupees Eighteen Lakh Ninety-Seven Thousand Nine Hundred and Ninety-Five Only) along with three entries of transfer of Rs. 2,10,000/-, Rs. 2,50,000/- & Rs. 2,00,000/- apart from the invoices.

19. The Demand notice which was preferred by the Applicant requesting payment of Rs. 23,87,252/- (Rupees Twenty-Three Lakh Eighty-Seven Thousand Two Hundred and Fifty-Two Only) was dated 05.07.2018. The said was replied to by the Corporate Debtor vide letter dated 03.08.2018 wherein the Corporate Debtor had acknowledged the liability to the tune of Rs. 2,50,000/- (Rupees Two lakh Fifty Thousand Only). It is seen that in the said reply the Corporate Debtor has contended that payment of the goods supplied has been made to the Applicant and later on the Corporate Debtor was liable to pay only Rs. 2,50,000/- (Rupees Two Lakh Fifty Thousand Only). The Corporate Debtor in its reply has also annexed the delivery challans showcasing that the quantity mentioned in the invoice was different from the quantity delivered. From the delivery challans of the respective



invoices numbered as 17859, 28967 and 17869, we are able to see the discrepancy in the weight quantity mentioned in the invoices and the weight quantity delivered to the Corporate Debtor. The Corporate Debtor has not filed any proof of the discrepancy as alleged in the invoices number 17625,17627, 17713 and 17732 and for invoices numbered as 13638, 17785 and 18050, the Corporate Debtor has attached hand written challans.

20. The Corporate Debtor has also revealed that a Civil Suit was filed by the Applicant wherein the Hon'ble Court had vide Order dated 25.10.2018 directed the Corporate Debtor to deposit a Demand Draft of Rs. 2,50,000/- (Rupees Two Lakh Fifty Thousand Only) as Security Deposit which was duly complied with. It has also been brought to our notice that an FIR was registered against the directors of the Corporate Debtor and one Mr. Bhavesh Jain, son of the Director whereas arrest in pursuance of the same was stayed by the Hon'ble High Court and later the case was closed for being civil in nature.
21. The Applicant has admitted that a summary suit was filed for recovery of an amount of Rs. 2,50,000/- as the Corporate Debtor had preferred a cheque of Rs. 2,50,000/- for discharge of partial liability which was dishonoured. Hence, the summary suit was preferred before the Senior Civil Judge, Jodhpur.
22. It is imperative to note that the Applicant had filed a Summary Suit against the Corporate Debtor on 25.09.2018 before the Civil Judge, Senior Division,



Jodhpur for recovery of Rs. 2,50,000/- (Rupees Two Lakh Fifty Thousand) as the cheque issued by the Corporate Debtor was dishonoured on presentation. In addition to the summary suit, the Applicant also preferred an Application under Order 38 Rule 5 of the Code of Civil Procedure, 1908 for attachment of a particular property. Upon examining the application filed under Order 38 Rule 5 it is comprehended that the summary suit was filed when the aforementioned cheque was dishonoured. In addition to the same, examination of the application also reveals that the Corporate Debtor purchased goods from the Applicant amounting to Rs. 2,68,303/- (Rupees Two Lakh Sixty-Eight Thousand Three Hundred and Three Only) vide Invoice No. 18050 and the cheque dated 14.06.2018 amounting to Rs. 2,50,000/- (Rupees Two Lakh Fifty Thousand) was issued in lieu of payment of the said goods, which was later dishonoured on 15.06.2018. Also, the Legal Notice preferred was the same as the demand notice u/s 8 of the Code dated 05.07.2018 and the acknowledgement of the liability to the tune of Rs. 2,50,000/- (Rupees Two Lakh Fifty Thousand Only) was also established by the reply of the Corporate Debtor dated 03.08.2018. The Decree in the said summary suit was passed on 14.03.2019 wherein it is confirmed that the total amount claimed in the suit under Order 37 CPC was based on GST Invoice No. 18050 dated 28.11.2017 for a sum of Rs. 2,68,303/-. The Defendant/Corporate Debtor issued a Cheque No. 00187 in the favour of the Plaintiff/Operational Creditor for full and final settlement of the account for



a sum of Rs. 2,50,000/-. The Decree further states that the Applicant is entitled to receive the Demand Draft which was deposited by the Corporate Debtor before the Adjudicating Court.

23. Therefore, in view of the proceedings presented before the Civil Court, Jodhpur, it is summarised that the Applicant as payment of Invoice No. 18050 presented a cheque dated 14.06.2018 which was dishonoured on 15.06.2018. In furtherance of the same the Applicant preferred the Demand Notice on 05.07.2018 which was replied to by the Corporate Debtor vide Letter dated 03.08.2018 acknowledging the liability of Rs. 2.5 Lakhs. Thereafter, the Applicant preferred a Summary Suit on 25.09.2018 seeking recovery of Rs. 2.5 Lakhs in lieu of the dishonoured cheque. Meanwhile, during the pendency of the suit the Applicant preferred an Application under Order 38 Rule 5 of the Code of Civil Procedure, 1908 seeking attachment of property and the Civil Court vide order dated 25.10.2018 directed the Corporate Debtor to submit a Demand Draft of Rs. 2.5 Lakh which was duly complied with. Later on, the said summary suit came to be decreed on 14.03.2019 which was decided in favour of the Applicant and the Applicant was entitled to receive the Demand Draft presented by the Corporate Debtor.
24. Therefore, it is settled that Civil Court, Jodhpur has already decreed an amount of Rs. 2,50,000/- (Rupees Two Lakh Fifty Thousand Only) in favour of the Applicant. The Applicant has claimed default in repayment against 18 invoices which amount to a total of Rs. 1,21,95,455/- (One Crore Twenty-



One Lakh Ninety-Five Thousand Four Hundred and Fifty-Five Only) which are dated between the period 10.08.2017 and 28.11.2017 whereas from the Ledger of the Applicant and the payment receipts annexed by the Corporate Debtor vide Diary No. 871/2022 dated 23.03.2022, it is discernible that the Corporate Debtor has paid an amount of Rs. 1,23,66,218/- (Rupees One Crore Twenty-Three Lak Sixty-Six Thousand Two Hundred and Eighteen) in the period commencing from 01.04.2017 to 31.001.2018 which is in excess to invoices raised. It is without a doubt that the Applicant has annexed the copies of the invoices claimed which are amounting to Rs. 1,21,95,455/- (One Crore Twenty-One Lakh Ninety-Five Thousand Four Hundred and Fifty-Five Only) in total but at the same time the Corporate Debtor has also placed copy of Tax invoices against the payment made which are amounting to a total of Rs. 1,23,66,218/- (Rupees One Crore Twenty-Three Lakh Sixty-Six Thousand Two Hundred and Eighteen Only) after adding the online transfer as mentioned in the Ledger. Therefore, it is clear that the Corporate Debtor has made payment towards the invoices raised by the Applicant.

25. The question which arises before us is regarding the unexplained opening balance as mentioned in the Ledger i.e. Rs. 18,97,995/- (Rupees Eighteen lakh Ninety-Seven Thousand Nine Hundred and Ninety-Five Only) and the transfer of Rs. 6,60,000/- (Rupees Six lakh Sixty Thousand Only) collectively. The Applicant has annexed Ledger account of the Corporate Debtor for the period from 01.04.2013 to 31.03.2017 but the same cannot be



relied upon wholly without any documentary proof of invoices to initiate the CIRP of the Corporate Debtor. Further this ledger fails to explain the transfer of Rs. Rs. 6,60,000/- (Rupees Six lakh Sixty Thousand Only) collectively on 23.04.2018, 25.04.2018 and 26.04.2018.

26. Moreover, the Applicant preferred a summary suit after filing an application under Section 9 of the Code before this Authority. It is perceived that the said suit came to be filed after acknowledgement of debt by the Corporate Debtor vide letter dated 03.08.2018 to ensure recovery of Rs. 2.5 Lakh but when the suit was decreed in favour of the Applicant, the Applicant has not amended the claim filed before us which included the claim against invoice no. 18050 for which the summary suit was also filed. The act of treating this Adjudicatory Authority like a recovery forum by the Applicant is not encouraged. The Applicant on one hand are approaching this Authority to initiation of CIRP of the Corporate Debtor on the basis of unpaid 18 invoices and on the other hand approaching the Civil Court for recovery of an amount admitted by the Corporate Debtor does not reflect well in law. The portrayal of the facts by the Applicant in an evasive manner denote that the Applicant is treating this Adjudicatory Authority like a recovery forum.
27. It has very well been established that under Section 9 of the Code, to initiate CIRP proceedings, the Applicant is required to prove that the debt is due, it has not been paid and the debt is an undisputed debt. Dispute does not necessarily mean a suit or arbitration proceedings pending before receipt of



a Section 8 notice but can also be inferred from correspondence between the parties to the case regarding the existence of the amount of Debt, the quality of goods or services or the breach of representation or warranty.

28. In the present matter, the Applicant has failed to prove the debt as against the Corporate Debtor. The conditions laid down under Section 9 of the Code are not fulfilled. Therefore, we are not inclined to initiate CIRP of the Corporate Debtor as envisaged under the provisions of IBC.
29. Accordingly, *CP No. (IB) 29/9/JPR/2018* is dismissed as rejected. The Registry is directed to serve the copy of this Order to the parties.

DEEP
CHANDRA
JOSHI

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DEEP CHANDRA
JOSHI
Date: 2023.02.20
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**DEEP CHANDRA JOSHI,
JUDICIAL MEMBER**

PRASANTA
KUMAR
MOHANTY

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PRASANTA KUMAR
MOHANTY
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**PRASANTA KUMAR MOHANTY,
TECHNICAL MEMBER**