

**THE NATIONAL COMPANY LAW TRIBUNAL
CHANDIGARH BENCH, CHANDIGARH
(Exercising powers of Adjudicating Authority under
the Insolvency and Bankruptcy Code, 2016)**

**I.A. No. 2385/2023
&
CP (IB) No. 81/Chd/Pb/2023**

**Under Section 9 of
IBC, 2016, Rule 6 of
the Insolvency and
Bankruptcy Rules,
2016 and Rule 11 of
the NCLT Rules, 2016**

In the matter of:

Duke Fabrics (India)

**...Petitioner/Operational Creditor
Vs.**

Sadan Hosiery Private Limited

...Respondent/Corporate Debtor

In the matter of I.A. No. 2385/Chd/Pb/2023

Sadan Hosiery Private Limited

CIN : U18101PB1998PTC021829

PAN : AADCS4220N

Having its registered office at
Gurbaksh Nagar, Bahadur Ke Road,
Ludhiana, Punjab- 141008

...Applicant

Vs.

Duke Fabrics (India) Limited

Through its Director/Authorized Representative, Sh. Komal Kumar Jain

CIN : U18101PB1983PLC005324

PAN : AABCD9415E

Having its Registered Office at
GT Road, Near Jalandhar By Pass,
Ludhiana, Punjab - 141005

...Respondent

In the matter of C.P. (IB) No. 81/Chd/Pb/2023

Duke Fabrics (India) Limited

Through its Director/Authorized Representative, Sh. Komal Kumar Jain

CIN : U18101PB1983PLC005324

I.A. No. 2385/2023

&

CP (IB) No. 81/Chd/Pb/2023

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...Petitioner/Operational

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Vs.

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CIN : U18101PB1998PTC021829
PAN : AADCS4220N
Having its registered office at
Gurbaksh Nagar, Bahadur Ke Road,
Ludhiana, Punjab- 141008
Debtor

...Respondent/Corporate

Order delivered on: .03.2024

**Coram: HON'BLE MR. HARNAM SINGH THAKUR, MEMBER (JUDICIAL)
HON'BLE MR. L.N. GUPTA, MEMBER (TECHNICAL)**

Present:

For the Petitioner in main CP and Respondent in IA No. 2385/2023 : 1). Mr. Ashish Chopra, Senior Advocate
2). Ms. Nitika Sharma, Advocate
3). Mr. Shubham Gupta, Advocate
4). Mr. Aditya Jain, Advocate

For the Respondent in main CP and Applicant in IA No. 2385/2023 : Mr. Manuj Sabharwal, Advocate

**Per: Harnam Singh Thakur, Member (Judicial)
L.N. Gupta, Member (Technical)**

I.A. No. 2385/2023

1. The present application has been filed by the Corporate Debtor (Respondent in the main CP) under Rule 11 of the NCLT Rules, 2016, to place documents on record, namely the said business communications (SMS/text and WhatsApp) with the respective phone numbers from where these communications were originated and

received by the Respondent. The documents are taken on record and hence, the present application is disposed of accordingly.

JUDGMENT in C.P. (IB) No. 81/Chd/Pb/2023

2. The present petition is filed by Duke Fabrics (India) Limited (for brevity, “**Operational Creditor**”) under Section 9 of the Insolvency and Bankruptcy Code, 2016 against Sadan Hosiery Private Limited (for brevity, “**Corporate Debtor**”) seeking initiation of Corporate Insolvency Resolution Process against the Corporate Debtor, on account of default in payment of the Operational Debt.
3. It is averred that:
 - 3.1. The Operational Creditor is a company registered under the provisions of the Company Act, 1956, and is engaged in the business of manufacturing, processing, dyeing, and finishing of knitted cloth and yarn.
 - 3.2. The Corporate Debtor is a company incorporated under the Companies Act, 1956, and is engaged in the business of manufacturing knitted clothes.
 - 3.3. The Operational Creditor had supplied fabrics and dyed fabrics on job- work basis to the Corporate Debtor for the period of 18.03.2021 to 09.12.2021 and invoices were issued with a credit period of 30 days and the Corporate Debtor failed to make the payment against the invoices even after the due credit period.
 - 3.4. The Operational Creditor issued demand notice on 07.01.2023, calling upon the Corporate Debtor to make the payment of Rs. 1,47,70,999.06/- (Rupees One Crore, Forty-Seven Lakhs, Seventy

Thousand, Nine Hundred and Ninety-Nine and Six Paise only) along with interest of 24% p.a. up to the date of payment.

3.5. The Operational Creditor received a vague and evasive reply to the demand notice from the Corporate Debtor, wherein the existence of unpaid operational debt has not been disputed and is unsubstantiated by any document or record in support of the same. Moreover, the reply was served on the Operational Creditor after the expiry of the stipulated period of 10 days as mandated under the IBC Code, 2016.

3.6. The Operational Creditor has also filed an affidavit under Section 9(3)(b), Annexure A-4 of the petition, asserting that there is no pre-existing dispute.

4. The Corporate Debtor upon issue of notice, filed its reply dated 29.05.2023 via diary no. 00653/2 to the petition, wherein it is stated that the actual amount payable is Rs. 32.50 lacs as on 15.06.2022.

4.1. The Corporate Debtor submitted that the claim alleged by the Operational Creditor has been under dispute for the past several years, which has remained unresolved till date despite multiple meetings, negotiations, and alleged settlement entered into by the Operational Creditor. The said dispute is evidenced/documentated through WhatsApp chats, WhatsApp voice calls, telephonic calls, SMS', meetings and e-mails exchanged between the parties on different dates for settlement of dispute concerning various issues.

4.2. On 28.07.2021, through SMS message, the Respondent documented a conversation with the Dyeing Head- Mr. Vinay Yadav

of the Operational Creditor, that there were issues in the timely completion of job work of yarn/fabric. SMS messages exchanged between Operational Creditor and Corporate Debtor between July 28,2021 and August 4, 2021, are annexed and marked as Annexure R-1.

4.3. Mr. Nandan Jain, General Manager- Operations of Operational Creditor asked the Corporate Debtor to clear outstanding dues of Rs. 32.50 lacs, further subject to under discussion/negotiation as indicated by Mr. Jain in the WhatsApp chat dated 15.06.2022, which is annexed as Annexure R-2.

“Pls clear outstanding of Duke Fabrics 32.50 lacs. If any issue from ur side.. Feel free for a joint meeting with Kuntal ji by today evening. Thanks”

The aforesaid message was received when the relationship between the parties had already turned strained and no business transactions were carried on thereafter, and also, prior to the issuance of demand notice under Section 8 of the IBC.

4.4. The Corporate Debtor further submitted that the amount claimed by the Operational Creditor does not include the compensation of Rs. 10,99,876/- to be paid to the Corporate Debtor by the Operational Creditor, due to the loss of corporate/export orders owing to receipt of damaged goods/late return of goods/receipt of damaged goods. When the said issues were discussed with the Directors of the Operational Creditor, the WhatsApp message confirming/admitting the amount payable as Rs. 32.50 lacs was sent by Sh. Nandan Jain on 15.06.2022.

- 4.5. The emails dated 25.06.2022, 27.06.2022, 22.08.2022, 06.10.2022, and 10.10.2022 sent by the Corporate Debtor to the Operational Creditor, prior to the issuance of demand notice are pieces of evidence of the existence of dispute between the parties.
- 4.6. The Corporate Debtor also submitted that the Operational Creditor in its email dated 11.10.2022, insisted on collection of payment without assessing the damages, as was agreed with the directors of the Operational Creditor, creating another area of dispute. In the said email, Sh. Nandan Jain stated that the account was “settled” almost three months back, indicating a reference to the WhatsApp message dated 15.06.2022 whereby the claimed amount was mentioned as Rs. 32.50 lacs.
- 4.7. The Corporate Debtor further submitted that in his reply dated 17.01.2023 to the demand notice dated 07.01.2023, categorically pleaded the existence of the dispute on the quantum of debt as well to the quality of services provided and fabric made from the yarn dyed, with specific reference to the emails mentioned above.
- 4.8. The Corporate Debtor also denied that there is any fixed credit period for the payment of invoices of job work agreed upon including the interest @24 percent for unpaid amount. There was no stipulation regarding the credit period of 30 days as alleged by the Operational Creditor. The ledger statements maintained by the Operational Creditor in the usual course of business do not show any accrual of interest for any unpaid amount beyond the alleged stipulated period of 30 days. It is also submitted by the Corporate

Debtor that the said stipulation is a mere standard term printed on a pre-formatted invoice but has never been acted upon any time in the past, nor any communications about the past transactions have been annexed by the petitioner to evidence the same.

4.9. The Corporate Debtor also submitted that the present application does not comply with the requirement of Section 9(3)(d) of IBC as it is not accompanied by a copy of any record with information utility confirming that there is no payment of an unpaid operational debt by the corporate debtor, if available. There is no averment in the application by the Operational Creditor that a copy of any record with information utility is not available and hence not being annexed.

4.10. Regarding the contention of the Operational Creditor that the reply to the demand notice was given after a lapse of 10 days, the Corporate Debtor submitted the binding decision of NCLAT in ***Brand Realty Services Ltd. v. Sir John Bakeries India Pvt. Ltd., 2022 SCC Online NCLAT 290***, wherein it has been held as under:

“It goes without saying that record of dispute in the Information Utility can very well be pointed out by the Corporate Debtor before the Adjudicating Authority when notice is issued under Section 9. Further in Reply to Section 9 Corporate Debtor can bring the material to indicate that there are pre-existing disputes in existence prior to issuance of demand notice under Section 8. We thus are of the considered opinion that mere fact that Reply to notice under Section 8(1) having not been given within 10 days or no reply to demand notice having been filed by the Corporate Debtor does not preclude the Corporate Debtor to bring the relevant materials before the Adjudicating Authority to establish that there is pre-existing dispute which may lead to the rejection of Section 9 application...”

5. The Operational Creditor in its rejoinder dated 23.08.2023 filed vide diary no. 00653/3 submitted that the Corporate Debtor had set up a false and forged courier receipt to take a false plea of allegedly dispatching its

reply to the Demand Notice under Section 8 of the IBC to dishonestly bring it within the limitation period of 10 days. Annexure R-10 purports it to be the acknowledgment issued by the courier agency dated bearing tracking no. 22054200105527, 17.01.2023, and the name of the addressee as Duke Fashion, to purport the early dispatch of this notice dispute in response to the service of the Demand Notice issued by the Operational Creditor attached as Annexure A-3, whereas the Notice/Reply has been served on the Operational Creditor on 31.01.2023 which is attached as Annexure A-3 with the petition. The envelope contains the name of the addressee as Duke Fabrics India Limited, whereas the courier receipt Annexure R-10 bears the name of the addressee as Duke Fashion, which is itself is a separate and distinct entity.

- 5.1. The Operational Creditor further submitted that the ledger accounts of the Operational Creditor are admissible as per Section 34 of the Indian Evidence Act. No ledger account statement as per the books of the Corporate Debtor has been filed by the Corporate Debtor to rebut the account statements of the Operational Creditor.
6. The Operational Creditor submitted that no dispute existed between the parties except for the recovery of the outstanding amounts before the initiation of the proceedings under Section 9 of the IBC. The Operational Creditor alleged that the Corporate Debtor has set up some emails as Annexure R-3 to R-9 for the period between June 2022 and October 2022 as well as some unreliable WhatsApp messages of June 2022

(Annexure R-2) to set up the purported existence of the dispute. No alleged loss has been quantified in the emails mentioned above.

Moreover, from the ledger account statement (Annexure A-6), the last sale was made to the Corporate Debtor on 09.12.2021. As per the terms of the invoices against which the aforesaid materials have been purchased, the amount was payable within 30 days from the sale. Further, condition no. 4 on every invoice issued by the Operational Creditor to the Corporate Debtor stipulates any claim regarding quality, damage or shortage must be lodged in writing within 2 days of delivery, otherwise the same would not be allowed.

6.1. The Operational Creditor submitted that the email conversations which the Corporate Debtor has relied upon have been addressed after 6 months from the last date of sale/supply of goods/services to the Corporate Debtor. Hence, the alleged dispute concerning quality is beyond the agreed returnable period of 2 days and has been set up after a long period of 6 months and after the consumption of the goods by the Corporate Debtor.

6.2. According to the Operational Creditor, all the supplies had been made to the Corporate Debtor between March 2021 and December 2021. However, the attached emails were admittedly addressed in June 2022, i.e., effectively after more than a year of accepting such supplies. Also, the emails attached by the Corporate Debtor are an admitted fact that the Corporate Debtor had turned into insolvent and is only trying to prolong the process of initiation of CIRP of the Corporate Debtor.

- 6.3. The Operational Creditor contended that the Board Resolution attached is an authorization vested with two of the Directors of the Corporate Debtor, clothing them with the authority to act upon the same. The power to file an application under the Code is automatically vested with the Directors of the Company under Section 179 of the Companies Act 2013. The Board Resolution attached is only to append the same to show authority of the Board to do a particular act.
7. The Operational Creditor filed its written submissions dated 06.10.2023 vide diary no. 00653/4, reiterating the facts of the petition and the rejoinder. The Corporate Debtor filed its written submissions dated 11.10.2023, vide diary no. 00653/6.
8. During arguments, the Ld. Counsel for the Operational Creditor asserted that there is no pre-existing dispute between the parties and the present petition is liable to be admitted.
- i. The Ld. Counsel for the Corporate Debtor contended that the reply to the notice of dispute is late and beyond the prescribed period of limitation and has placed reliance upon the authority in ***Mobilox Innovations Pvt. Ltd. vs. Kirusa Software Pvt. Ltd. [Civil Appeal No. 9405 of 2017]***, wherein the Apex Court held :
- “The strict adherence of these timelines is of essence to both the triggering process and the insolvency resolution process. As we have seen, one of the principal reasons why the Code was enacted was because liquidation proceedings went on interminably, thereby damaging the interests of all stakeholders, except a recalcitrant management which would continue to hold on to the company without paying its debts. Both the Tribunal and*

the Appellate Tribunal will do well to keep in mind this principal objective sought to be achieved by the Code and will strictly adhere to the time frame within which they are to decide matters under the Code.”

- ii. The Ld. Counsel for the Operational Creditor while alleging that the Corporate Debtor has raised the dispute with regard to quality of goods after a long time of over 6 months and after the consumption of goods, has referred to the authority in ***Deepak Modi vs. Shalfeyo Industries Private Limited and Anr. (Company Appeal (AT) (Insolvency) No. 1019 of 2022)***, wherein *Hon'ble NCLAT affirmed the order of the Adjudicating Authority, admitting a Section 9 Application noting that:*

“the defense of pre-existing dispute was moonshine, as no dispute with regards the quality of the materials supplied by the Operational Creditor was raised at the time of inspection and was only raised after the goods were consumed by the Corporate Debtor. Thus, any dispute related to the quality of the product after the consumption cannot be included in the definition of "pre-existing dispute", It is true that under the provisions of Code if Adjudicating Authority is satisfied with pre-existing dispute at the time of entertaining an application filed under Section 9 of the Code there is no reason to initiate the same or admit the application. However, the law is settled on the point that there must be pure pre-existing dispute. Meaning thereby that genuine pre-existing dispute must exist in rejecting an application under Section 9 of the Code.”

- iii. The Ld. Counsel for the Operational Creditor while stressing upon the fact that the amount claimed in the petition is above the threshold limit of Rs. One Crores, has referred to the Hon'ble NCALT's verdict in the matter of ***Mr. Prashat Agarwal, Member of Suspended Board of Bombay Rayon Fashions Ltd. Vs.***

Vikash Parasrampur [Company Appeal (AT) (Ins) No. 690 of 2022], wherein it has been held that under Section 4 of the Insolvency & Bankruptcy Code ('IBC'), an Operational Creditor can club the 'interest' with the principal amount, provided that the interest was perspicuously stipulated in an invoice or an agreement.

iv. The Ld. Counsel for the Operational Creditor stated that the whatsapp messages cannot be relied upon and has referred to the Coordinate Bench of NCLT Ahmedabad's observation in the matter of **Kashyap Infraprojects Pvt. Lid. V/s Hi-Tech Sweet Water Technologies Pvt. Ltd.(CP (IB) No. 349 of 2020, NCLT]**, wherein it was held that Printouts of Whatsapp conversations cannot be relied upon for the simple reason that they are not supported with other evidence to show from which mobile numbers the conversations were made, in whose names those numbers are registered and if the persons taking part in the conversations, are the representative of the Operational Creditor and the Corporate Debtor or not. Hence, such messages are inadmissible and cannot be taken into consideration.

9. The Ld. Counsel for the Corporate Debtor, during the course of arguments stated that WhatsApp is an accepted mode of communication and the Courts have been using WhatsApp, email, etc for the service of summons, notices, advance copies, etc. in day-to-day proceedings. Reliance is placed upon SC's judgment in **Ambala Sarabhai Enterprise**

Ltd. vs. KS Infraspace LLP Limited & Anr [CA No. 9346 of 2019],

wherein the SC held that

“...the whatsapp messages which are virtual verbal communications are matters of evidence with regard to their meaning and its contents to be proved during the trial by evidence-in-chief and cross examination.”

9.1. The Ld. Counsel for the Corporate Debtor with regards to the non-maintainability of the petition where a plea of forgery has been taken by the parties, referred to the decision of the coordinate Delhi Bench of NCLT in **Narender Steel and Alloys v. M/s. Jai Mata Engineering Ltd. [CP IB-695/ND/2022]** vide order dated 26.09.2023, where it has been held as under:

"7. The Operational Creditor has submitted that these quality reports and Debit note submitted by Corporate Debtor are forged and denied its existence. The dispute with respect to forgery cannot be decided by this Adjudicating Authority. It is settled law that proceedings before NCLT are summary in nature and adversarial evidence cannot be led and appraised by this Tribunal. This Adjudicating Authority is not expected to ascertain the veracity of documents in a summary proceeding, if the Tribunal starts adjudicating these types of issues, then the purpose of the statute of enacting speedy disposal by the mechanism will be defeated. Therefore, the Applicant may explore other legal remedies.

8. It is also alleged in the rejoinder filed by the OC that neither the debit note nor the quality reports were sent to the Operational Creditor. The CD in its written submission has submitted that debit note along with the quality reports were sent to the OC through courier and WhatsApp. Further the OC has placed on tracking report and WhatsApp communication evidencing the delivery of debit note and quality report.

9. In the light of the above, this Tribunal dismiss the application filed by Operational Creditor. However, the claim under any other law, if permissible, can be pursued by the Petitioner as prescribed under that law."

9.2. The Ld. Counsel for the Corporate Debtor relied upon the binding precedent laid down by the Apex Court in **Mobilox Innovations P. Ltd. v. Kirusa Software P. Ltd, supra**, and **Rajratan Babulal Agarwal v. Solartex India P. Ltd. (2023) 1 SCC 115**, wherein it

has been re-iterated that standard of pre-existing disputes under IBC is not equivalent to the principle of preponderance of probability. It is submitted that the threshold of the existence of the dispute is mere prima facie and should be real, which exists in the present case.

9.3. The Ld. Counsel for the Corporate Debtor contended that the plea of the Operational Creditor regarding the discrepancy in the courier docket is irrelevant as, admittedly, the reply to the Section 8 notice has been received by the Operational Creditor and the same has been annexed by the Operational Creditor itself (Annexure A-3 of the application). Further, the issue of late receipt of reply by the Operational Creditor is covered by the decision of the Hon'ble NCLAT in ***Brand Realty Services Ltd. v. Sir John Bakeries India Pvt. Ltd., 2022 SC Online NCLAT 290***. Even otherwise, the alleged difference in the docket number is because of the in-house operational error by the courier agency (which is not under the control of the Respondent) in respect of the booking receipt and once the Respondent handed over the reply packet to the courier agency was left out the control of Respondent.

9.4. The Ld. Counsel for the Corporate Debtor contended that the plea of the Operational Creditor that the ledger account of the Operational Creditor shows the existence of liability is not tenable in law as the ledger account annexed with the petition by the Operational Creditor does not contain an acknowledgment of claimed debt or any confirmation from the Respondent, making it is

self-serving. Further, the plea of the Operational Creditor as regards Section 34 of the Evidence Act itself is not applicable as Section 34 of the Act categorically states that the ledgers in itself are not conclusive proof debt of liability. Moreover, the Evidence Act is strictly not applicable to the Tribunal except the principle of law.

9.5. The Ld. Counsel for the Corporate Debtor submitted that the plea of the Operational Creditor that the ledger of the Operational Creditor in the books of the Respondent is not sustainable because a) the payment liability about the invoices has been disputed by the Respondent due to quality and quantity issues; b) no balance confirmation from the Respondent regarding the ledger account annexed by the Operational Creditor (yearly or periodic confirmation) to the application is produced by the Operational Creditor and it is Operational Creditor who has to establish that no dispute qua the amount claimed.

9.6. Further, the Ld. Counsel for the Corporate Debtor submitted that the clauses in the invoices relied upon by the petitioner pertaining to interest, disputes be raised within 2 days from the date of supply, credit period of 30 days or any other stipulation in the invoice as the same was never agreed upon or acted upon as evident from the ledger account relied upon by the Operational Creditor. The invoice relied upon by the Operational Creditor does not carry any stamp or acknowledgment by the Respondent and the stipulations as aforesaid are only unilateral and are not binding in the absence of signatures. These invoices annexed are mere proof of supply and

do not naturally record the dispute with regard to the quality, quantity, and other matters. Even otherwise, once have entered into settlement proceedings for settling disputes, the alleged stipulations in the purported invoices diminish any rights and obligation arising therefrom.

9.7. The Ld. Counsel for the Corporate Debtor regarding the admissibility of the WhatsApp messages and emails, has placed reliance upon this Bench's judgment in the matter of ***Indo Pack Limited vs. M Sea Pharmaceuticals Private Limited, 2023, SCC Online NCLT 115***, wherein it has been observed that:

“ 16. ...it is settled law that communications through emails and letters issued by corporate debtor to the operational creditor before receipt of demand notice dated 04.07.2019 pointing out deficiencies in service amounts to dispute. In the case in hand, as per communication on 29.09.2018, it is apparent that there was a pre-existing dispute.”

9.8. The Ld. Counsel for the Corporate Debtor has further placed reference to Hon'ble NCLAT's judgment in the matter of ***Continuous Dyeing & Printing Mills vs. Bhavika Apparels Pvt. Ltd., Company Appeal (AT)(Insolvency) No. 301 of 2022***, wherein it has been observed that:

“ 14. ...the Adjudicating Authority took notice of the fact that the above notice of 23.08.2019 to the operational creditor for supply of defective goods predated the Section 8 Demand Notice which was issued on 16.09.2019. The Adjudicating Authority while observing that the notice of the Corporate Debtor raising defects in the goods supplied dated 23.08.2019 was six months after the issue of last invoice on 05.02.2019, it also took cognizance of the fact that this notice nevertheless preceded

the demand notice thereby establishing evidence of dispute between the two parties.”

10. On hearing the Ld. Counsels for both parties and on perusal of the facts and material on record, the following issues shall be delved into:

10.1. Whether the petition filed within the period of limitation?

The last invoice was raised on 09.12.2021, and after taking into account a credit period of 30 days when no interest is chargeable, the due date comes out to be 08.01.2022, as mentioned in part IV of the petition. The Petition is filed on 10.03.2023 vide diary no. 00653, which is well within the period of limitation.

10.2. Whether the demand notice dated 07.01.2023 under Section 8 properly served on the Corporate Debtor and reply was filed after the stipulated period of 10 days as mentioned under Section 8(2) of the Code.

The demand notice dated 07.01.2023 was served upon the Respondent-Corporate Debtor on 11.01.2023, as the postal receipt along with the tracking report is annexed at Annexure-A3 of the petition. Thus, the statutory demand notice was duly served upon the Corporate Debtor. The Corporate Debtor gave a reply dated 17.01.2023 to the said notice, which is alleged to be filed after a lapse of 10 days. The finding of Hon'ble NCLAT in the matter of ***Brand Realty Services Ltd. vs. Sir John Bakeries India Pvt. Ltd., supra***, finds relevance as it has been observed that reply to notice under Section 8(1) having not been given within 10 days or no reply to demand notice having been filed by the Corporate

Debtor does not preclude the Corporate Debtor to bring the relevant materials before the Adjudicating Authority to establish that there is a pre-existing dispute which may lead to the rejection of Section 9 application.

10.3. Whether the dispute between the parties was pre-existing?

The facts of the instant case indicate that the alleged liability has been disputed on numerous occasions and the dispute was pre-existing. The issues regarding the timely provision of job work of yarn/fabric were raised by the Corporate Debtor on multiple occasions, which was duly acknowledged by the OC and settlement talks for the payment were in progress, after analyzing the loss incurred by the Corporate Debtor on account of receipt of damaged goods/late return of goods/receipt of damaged goods. Emails were exchanged between the parties, prior to the issuance of the demand notice under Section 8, which evidences the existence of the dispute between the parties.

Further, the Corporate Debtor in his reply to the demand notice categorically stated the existence of dispute on the quantum of debt as well to the quality of services provided and fabric made from the yarn dyed.

Further, the authority in ***Continuous Dyeing & Printing Mills vs. Bhavika Apparels Pvt. Ltd., Company Appeal (AT)(Insolvency) No. 301 of 2022***, has made the stance clear that even if the dispute/issue regarding the defect/supply of goods was raised by the Corporate Debtor after 6 months from the date of issue of the

invoice, but predated the issuance of the demand notice under Section 8(1) of the Code, pre-existing dispute is established between the parties. Thus, the contention of the Operational Creditor that no dispute existed between the parties and the claim of the Corporate Debtor regarding the untimely provision of job work of yarn/fabric is liable to be dismissed, lacks merit and a pre-existing dispute is established.

10.4. Whether there was any fixed credit period for the payment of invoices of job work agreed upon including the interest @24 percent for unpaid amount.

The invoices issued by the OC stipulate the conditions, firstly, interest will be charged @24% p.a. if the bill is not paid within 30 days. Secondly, claims regarding quality damage, shortage, and rate, must be lodged in writing within 2 days of the date of delivery, otherwise, the claim shall not be allowed.

11. After analyzing the issues involved, we are of the considered view that there was a pre-existing dispute between the parties. The last invoice was raised on the Corporate Debtor last on 09.12.2021, and the emails dated 25.06.2022, 27.06.2022, 22.08.2022, 06.10.2022 and 10.10.2022 clearly exhibits that there was a dispute between the parties for the payment and settlement of accounts, owing to the losses incurred by the CD due to untimely provision of the job work by the OC. Further, the email dated 11.10.2022, the OC has stated that the account was 'settled' almost three months ago, indicating to the WhatsApp message dated 15.06.2022. where the amount of claim is stated to be Rs. 32.50 lacs.

The demand notice was issued on 07.01.2023, much after the abovementioned emails and messages.

11.1. NCLT, Delhi in the matter of ***M/s Bhandari Hosiery Exports Limited vs. M/s In-Time Garments Private Limited, CP No. (IB)-559 (ND)/2018***, rejected the petition filed under Section 9 of the Code on the ground that there was a pre-existing dispute, though not legally crystallized in any litigation but a valid dispute was raised by the CD time and again much prior to the notice served under Section 8 of the IBC. The same was reaffirmed by the Hon'ble NCLAT in the appeal filed against the said order of NCLT, Delhi Bench.

11.2. Hon'ble Supreme Court in the case of ***"Mobilox Innovative Private Limited vs. Kirusa Software Private Limited, supra***, has held that:

"Therefore, all the adjudicating authority is to see at this stage is whether there is a plausible contention which requires further investigation and that the "dispute" is not a patently feeble legal argument or an assertion of fact unsupported by evidence. It is important to separate the grain from the chaff and to reject a spurious defence which is mere bluster. However, in doing so, the court does not need to be satisfied that the defence is likely to succeed. The court does not at this stage examine the merits of the dispute except to the extent indicated above. So long as a dispute truly exist in fact and is not spurious, hypothetical or illusory, the adjudicating authority has to reject the application. In the present

case the respondent M/s Bhandari Hosiery Exports Limited Versus In-Time Garments Private Limited has raised dispute with sufficient particulars. Besides the case records reveal that there was existence of dispute much prior to the issuance of notice under section 8 of the code. The claim of the dispute suggest the need of elaborate investigation. The moment there is existence of such a pre-existence dispute, the corporate debtor gets out of the clutches of the code.”

12. Thus, pre-existing dispute being established inter se parties, before the issuance of the statutory demand notice under Section 8(1) of the Code, the present petition is dismissed and disposed of accordingly.

-sd-
(L.N. Gupta)
Member (Technical)

-sd-
(Harnam Singh Thakur)
Member (Judicial)

March 01, 2024
ASG