

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

Company Appeal (AT) (Insolvency) No. 95 of 2025

&

I.A. No. 395 of 2025

[Arising out of the Order dated November 14, 2024 passed by the 'Adjudicating Authority' (National Company Law Tribunal, Ahmedabad Bench, Court-2) in CP (IB) No. 180(AHM)2022]

IN THE MATTER OF:

Tirupati Drilling & Mining Services Private Limited

H. No. 316, Bombay Chowk,
Beheramal Road Opposite St. Mary's Convent School
Jharsuguda, Orissa - 768201.

Email: tirupati.enterprises.js@gmail.com

...Appellant

Versus

Sadbhav Engineering Limited,

Sadbhav House, Opp. Law Garden Police Chowki,
Ellisbridge, Ahmedabad, Gujarat - 380 006.

Email : sadbhaveng0310@gmail.com

...Respondent

Present:

For Appellant : Mr. Abhijeet Sinha Sr. Advocate with Mr. Shaunak Mitra, Mr. Saikat Sarkar, Mr. Biswajit Kumar, Mr. Indradeep Basu and Ms. Bhavya Khatreja, Advocates.

For Respondent : Mr. Navin Pahwa Sr. Advocate with Mr. Rohan Talwar, Mr. Nilay Gupta and Mr. Uday P., Advocates.

ORDER
(Hybrid Mode)

[Per: Arun Baroka, Member (Technical)]

The present Appeal is filed under Section 61 of the Insolvency and Bankruptcy Code, 2016 ("IBC") against the Impugned Order dated November

14, 2024 (“Impugned Order”) passed by the National Company Law Tribunal, Ahmedabad Bench, Court-2 (“Adjudicating Authority” or “AA”) in CP (IB) No. 180 (AHM) of 2022 (“Petition”). The Petition filed by the Appellant under Section 9 of the IBC against the Respondent / Corporate Debtor, Sadbhav Engineering Ltd was dismissed by the Impugned Order.

Brief facts of the case

2. The Corporate Debtor was engaged by Uranium Corporation of India Ltd (UCIL) to carry out activities at Banduhurang Opencast Mines, Jamshedpur. Subsequently, the Corporate Debtor issued a Work Order to the Operational Creditor for drilling operations at the site, initially for a year, and later extended until March 31, 2020. Despite reminders, the Corporate Debtor failed to release outstanding payments to the Operational Creditor and, instead, denied claims and making baseless allegations. The Operational Creditor had issued invoices covering the period from November, 2018, to February, 2020, which were received by the Corporate Debtor on May 5, 2021. The Corporate Debtor also endorsed balance confirmations to the Operational Creditor. Subsequently, the Operational Creditor issued a Demand Notice under Section 8 of the IBC, which was duly received by the Corporate Debtor. With no resolution in sight, the Operational Creditor filed an Application under Sections 8 and 9 of the IBC before the AA [CP (IB) No. 180 (AHM) of 2022]. However, the AA dismissed the Application on the grounds of pre-existing disputes between the parties. Aggrieved by this decision, the Appellant has filed the present Appeal.

Submissions made by the Appellant

3. The AA relied on totally irrelevant materials and considerations and, in doing so, acted in derogation of the tests laid down by the Hon'ble Supreme Court in ***Mobilox Innovations Pvt Ltd vs Kirusa Software Pvt Ltd. (2017) SCC Online SC 1154 (Civil Appeal No. 9405/2017)***.

4. The purported stand taken by the Respondent in its communications dated March 2, 2020, and June 20, 2020, were patently feeble or unsupported by evidence or mere bluster. Communications issued by the Respondent were not "notice of dispute." Vague denials of liability by the Respondent were sham, moonshine and illusory. The purport and contents of the communications issued by the Respondent, including the letters dated March 2, 2020, and June 20, 2020 were misconstrued and misunderstood.

5. The AA has erred in mechanically citing the issuance of two letters issued by the Respondent prior to issuance of the Demand Notice. There is an admission of the Respondent made in its Sur-Rejoinder Affidavit that would fully establish the genuineness of the Appellant's claim made in the Section 9 Petition. There were no pre-existing disputes between the parties prior to the issuance of the Demand Notice on December 31, 2021, and the ingredients required for initiating CIRP in respect of the Respondent were fully and sufficiently proved and satisfied. The aforesaid communications don't contain any assertion that the work was not completed. Respondent's own admissions in its Reply and Sur-Rejoinder Affidavits filed before the AA suggest no genuine or pre-existing disputes. Respondent had admitted on

Affidavit that it had received all the invoices raised by the Appellant (without contemporaneous objection). It is settled law that a Corporate Debtor merely denying liability of outstanding amount prior to the issuance of a demand notice amounts to pre-existing dispute.

6. The AA has failed to appreciate the true scope and ratio of the Hon'ble Supreme Court's decision in *Mobilox Innovations (P) Ltd. (supra)* and the Adjudicating Authority has, in fact, misunderstood and misapplied the same. The AA failed to appreciate that going by the decision above, it was incumbent on the AA to examine whether the stand taken by the Respondent was mere bluster or patently feeble, which, however, the AA has failed to do. The Impugned Order is unreasoned and passed in violation of the principles of natural justice and in derogation of the principles underlying adjudication of an application under Section 9 of the IBC.

7. The Impugned Order is passed in derogation of the principles and tests to be applied in adjudicating a Section 9 Petition under the IBC.

Submissions made by the Respondent

8. The present Appeal is not maintainable and is liable to be dismissed solely on the ground that there are pre-existing disputes between the parties. The Corporate Debtor has raised dispute with respect to the quantum of amount, multiple times prior to the issuance of the Demand Notice dated 31.12.2021 by the Petitioner.

9. The Appellant issued Legal Notice dated 18.2.2020 (Pg 77 of the Petition) calling upon the Respondent to pay an amount of ₹4,96,19,400/-. In the said Letter, the Appellant has admitted that the Respondent has paid an amount of ₹1,89,20,129/- and, therefore, the Respondent is liable to pay balance amount of ₹3,11,99,271/-. In response to the said Notice, the Respondent replied vide Letter dated 02.03.2020 (Pg 78 of the Petition), wherein the Respondent has specifically stated that the figure of ₹4,96,19,400/- is misrepresented and wrong. It is further stated that the total amount due and payable by the Respondent to the Petitioner is ₹2,73,50,698/-, again which the Respondent has already made payment of ₹2,11,07,989/-. It is further stated in the Letter that the total outstanding due was, thus, only ₹68,39,886/-, which includes ₹5,97,177/- as security deposit and, therefore, the balance outstanding is ₹62,42,709/-Despite this specific stand, the Appellant, vide Letter dated 01.06.2020, reiterates that an amount of ₹3,11,99,271/- is outstanding. In response to the Letter dated 20.06.2020 reiterating that the total amount due and payable is only ₹68,39,886/-, which includes ₹5,97,177/- towards security deposit. The Respondent further stated that the Appellant has to clear the GST liability. In response to the Letter dated 20.06.2021, the Appellant addressed a Letter dated 21.07.2020 wherein the Appellant claimed an amount of ₹3,11,99,271/-, which includes ₹2,62,94,583/- towards tax invoice and ₹49,04,688/- towards GST liability.

10. Without prejudice to the rights and contentions of the Respondent, the Respondent has also raised Notice of Dispute in the Reply dated 03.02.2022 given in response to the Demand Notice. In the Reply, amongst others, the Respondent has also raised contention that there is no provision for interest either in the Work Order or in the invoice and, therefore, the interest as claimed by the Petitioner is ill-founded. Thus, from the above communications, it is clear that there are pre-existing disputes much before the issuance of the Demand Notice. It is settled law that when there are pre-existing disputes, an application under Section 9 of the IBC is liable to be dismissed. Hence, the present Petition is liable to be dismissed. It is a well settled principle of law that whenever there is an existence of genuine dispute between the parties emerging from the documentary evidences, the AA would reject the Petition. In the present case also, there is a pre-existing dispute between the parties with respect to the quantum of amount. The Operational Creditor has claimed false/ wrong claim/ amount, which speaks volumes about the conduct of the Operational Creditor. The present Petition, therefore, deserves to be rejected. Respondent also relies upon judgment of Hon'ble Apex Court in ***Mobilox Innovations (P) Ltd. v. Kirusa Software (P) Ltd. (supra)***.

11. The Respondent has also raised objections with regard to the maintainability of the Application. Prior to issuance of Demand Notice on 07.03.2019, the Respondent had made number of complaints and had raised concern about the quality of machinery supplied by the petitioner. Copy of the e-mails sent by the Corporate Debtor between 25th April 2015 and 13th

December, 2016 of such complaints/e-mails are at page nos. 41-48. It is also matter of record that the Respondent had made complaints with regard to the quality of the machinery supplied by the Appellant. The Respondent has placed on record copy of the e-mails exchanged between the two parties clearly establishes that there is/was pre-existing dispute before issuance of the demand notice. Thus, the Application is also not maintainable on account of pre-existing dispute which was raised prior to the issuance of Demand Notice. Under the facts and circumstances as discussed in sequel herein above, the Application, so filed by the applicant is not maintainable and is bad in law as well as in facts.

12. The material/ coke supplied by Appellant to Respondent was of poor/substandard quality. On account of supply of defective coke, the Respondent has suffered huge financial losses of more than 12 crores. The communication regarding the poor/substandard quality was also done through e-mail. Moreover, porosity of the said material/coke was much higher up to 18.4%.

13. Further the Demand Notice in the present case was issued under Section 8 (1) of the Code on 29-8-2018. Respondents have placed their earlier correspondences dated 15-1-2018 and beyond, raising issues with respect to the quality of goods supplied by the operational creditor. It is thus seen that the dispute was brought to the notice of the applicant prior to the issuance of the Demand Notice dated 29.08.2018 issued under Section 8 (1) of the

Code. It is prayed to dismiss the present Petition with costs in the interest of justice.

Appraisal

14. Heard counsels of both sides and perused the materials on record. The Appeal questions the dismissal of Section 9 Petition under the Code, which was filed by the Appellant-OC- Tirupati. The Appellant had issued a Demand Notice dated 31.12.2021 in Form 3 under Rule 5 under Section 8 of the Code to the Respondent-CD-Sadbhav demanding a payment of the unpaid operational debt with total amount of ₹4,07,33,246 with principal of ₹3,10,57,246 (including S.D of ₹5,52,541) and interest of ₹1,04,00,888 with 21.04.2018 being the date of default.

15. AA, vide the Impugned Order, has dismissed the CP on the ground that there were pre-existing disputes between the parties prior to the issuance of the Demand Notice, under Section 8 of the Code, by the Appellant. In this Appeal we proceed to find out whether the facts and circumstances exist for pre-existing dispute which has resulted in the dismissal of Section 9 Application.

16. We note that the CD was appointed by the Uranium Corporation of India Ltd. (UCIL) to carry out mining activities at the Banduhurang Opencast Mines, Jamshedpur (Jharkhand) (UCIL Mine). In turn, on 01.07.2017, the CD had issued a Work Order (WO) to M/s. Tirupati Enterprises (sole proprietorship firm of Mr. Arvind Purseth) for drilling 160 mm dia holes in Waste/Ore at UCIL Mine. The WO was issued initially for a period of 1 year

but was thereafter extended by the CD on 30.06.2018 till 31.03.2020. It is claimed that the Sole Proprietorship Firm continued to perform the works and completed all works to the full satisfaction of the CD on 29.02.2020, and had initially raised Proforma Invoice(s) for the period November 2018 to February 2020, which were subsequently replaced by the issuance of Tax Invoice(s) for the period November 2018-February 2020.

17. It is contended that despite repeated follow ups, requests and reminders, the CD ignored payment of the outstanding dues, as a result of which the Sole Proprietorship Firm was constrained to issue a Legal Notice to the CD on 18.02.2020 (Legal Notice) demanding payment of the outstanding dues of ₹3,11,99,271/-.

18. The Respondent - M/s. Sadbhav Engineering Ltd. had replied to this legal notice on 02.03.2020 at (134 APB) in which the Respondent clarified that the figure of ₹4,96,19,400 is misrepresented and incorrect. The total amount due and payable by the respondent was only ₹2,73,50,698/- against which they had already made payment of ₹2,11,07,989/-. Therefore, the total outstanding due was only ₹68,39,886/- and after withholding security deposit of ₹5,97,177 the total outstanding amount is of ₹62,42,709 only. It indicates that the quantum of claim is under dispute and the payable amount by the CD is ₹62,42,709, which is less than Threshold of Rs one crores and CD says that the same will be released after the closure of work order. The relevant extract of the reply of the CD is as follows:

“....

Sadbhav Engineering Ltd. (SEL) notifies you that you have on the instruction of your client stated that Shri Arvind Purshet, Director of Tirupati Enterprises had submitted the bills amounting to Rs.4,69,19,400/- for the payment, which is totally misrepresented and wrong. SEL brings to your kind notice that your client has raised invoice of Rs.2,73,50,698/-, against this SEL, had already made the payment of Rs.2,11,07,989/-. As of now, the outstanding amount stands at Rs.68,39,886/-, wherein Rs. 5,97,177/- is withheld as security deposit and balance outstanding payable amount stand at Rs. 62,42,709/-.

As stated hereinabove, the balance outstanding amount of Rs.62,42,709/- will be released in due course of time and security deposit amount will be released after the closure of work order. Considering the matter, we request you to withdraw the notice as it is not valid in the eye of the law.”

[emphasis supplied]

19. Despite this reply, the Appellant vide Letter dated 01.06.2020, reiterates that an amount of ₹3,11,99,271/- is outstanding. The Respondent also in its reply on 20.06.2020 (Pg 81-82 of the Petition) reiterated that the total amount due and payable is only ₹68,39,886/-, which includes ₹5,97,177/- towards security deposit. The Respondent further stated that the Appellant has to clear the GST liability. The relevant extract of the letter dated 20.06.2020 (138 APB) from the Respondent is as follows:

“....

1) That Sadbhav Engineering Ltd. (SEL) notifies you that you have on the instruction of your client She Salik Ram Pursheth, Director of Tirupati Enterprises claimed an amount of Rs. 2,11,99,271/ for the payment which is totally misrepresented misconceived and far from truth. Please take notice that the amount outstanding to be paid to your client as per the ledger account of your client maintained by SEL stands at Rs. 68,39,886. Out of this, total amount of Rs. 5,97,177/- is withheld towards security deposit and the clear outstanding payable balance stands of Rs. 62,42,709/-

2) That the balance pending amount of Rs. 62,42,709/- will be released to your client within 20 days from the date of receipt of this letter. However, the amount of security deposit standing at Rs 5,97,177/- will be released only on successful discharge of the work order Contract as per the provisions of the Contract.

3. That on release of the outstanding payable amount, your client shall have to clear the GST liability as per law. Only thereafter your client can raise the further Tax Invoices for booking in the ledger account of SEL to clear the balance liability.

Considering the matter, we request you to withdraw the notice as it is not valid in the eye of law.”

[emphasis supplied]

20. In response to the Letter dated 20.06.2021, once again the Appellant addressed a Letter dated 21.07.2020 (Pg 83 of the Petition), wherein the Appellant claimed an amount of ₹3,11,99,271/-, which includes ₹2,62,94,583/- towards tax invoice and ₹49,04,688/- towards GST liability. Thereafter the Appellant issued a demand notice dated 31.12.2021. This was vehemently disputed by the respondent vide its reply at page 260 (APB) dated 03.02.2022, the relevant extract of the reply of the Respondent-CD is as follows:

“....

As per the demand notice, your client (i.e. Tirupati Drilling & Mining Services Private Limited/Tirupati Enterprise) is demanding the aggregate claim amount INR 4,07,33,246 including 12% interest p.a. This claim amount was previously denied and is again emphatically denied, as such claim amount is miscalculated & wrong. We further say that the actual calculated claim amount, as per work order, work completion & actual tax invoices, amounts to Rs. 68,39,886 that includes the security deposit amount. We had already raised dispute twice on dates 2nd March, 2020 & 20th June, 2020 previously. Your calculation is want of certified ledger from your client & a chartered accountant, who can verify the same.

Furthermore, it is denied that we had ever accepted or agreed the interest rate of 12% p.a. of any delayed payment. It is a misconception & misleading of facts by your client.

Thus, the said claim amount within the said demand notice was raised after the dispute was raised on the said amount and is a disputed amount, and there exists a dispute over the actual amount of claim on the basis of actual Tax Invoices raised by your client.

In addition to the above, it is worth to note that the very basis of claim calculation, i.e. the ledger & amount calculation, attached by

your goodself are illegible and it is not possible to understand the entries made in that. Furthermore, none of the attached annexure is cross-signed, verified or certified by your goodself/client, which is a material defect.

Therefore, you are requested to provide a proper claim calculation with CA/CS certified or verified ledger and proper cross-signed annexures. Also you are requested to withdraw the said demand notice which is based on fictitious claims of your client and on the basis of disputed amount.”

[emphasis supplied]

21. Later on the Respondent-CD in its reply to Section 9 Application filed by the Appellant-OC on, has responded as follows:

“....

3. I say and submit that the present petition is not maintainable and is liable to be dismissed solely on the ground that there are pre-existing disputes between the parties. I say that the Corporate Debtor has raised dispute with respect to the quantum of amount allegedly due by respondent to the petitioner, multiple times prior to issuance of Demand Notice dated 31.12.2021 by the petitioner.”

[emphasis supplied]

22. From the above exchange of correspondence between the Appellant and the Respondent, we find that there is a dispute with respect to quantum of the amount payable by the Respondent. We also find that this issue has been raised multiple times prior to the issuance of the demand notice dated 31.12.2021 by the Appellant. This has not been satisfactorily resolved. We are inclined to agree with the submissions of the Respondent that that UCIL is a Govt. body and all work done is to be certified by a third-party independent agency and the invoices have to be backed by the logbook maintained by the Appellant duly signed by the respondent and certified by an independent agency otherwise these are mere one-sided statements. Furthermore, we also agree with the contention of the respondent that mere stamping of the tax/proforma invoices done at the site office by lower

functionaries of the respondent is indicative of mere receipt of the same; it does not mean that the same has been accepted by the respondent company.

23. In the facts and circumstances of this case we therefore, find that there is a dispute with respect to the quantum of amount which is much prior to the issuance of the demand notice dated 31.12.2021 by the Appellant. As per Section 8(2)(a) of the Code, the respondent has brought on record the existence of a dispute. The AA as per the provisions of Section 9(5) on finding a notice of a pre-existing dispute has not admitted the Section 9 Application. The law has been well settled by Hon'ble Apex Court in ***Mobilox Innovations (P) Ltd. v. Kirusa Software (P) Ltd. (supra)*** wherein the Apex Court held that,

“....

40. It is clear, therefore, that once the operational creditor has filed an application, which is otherwise complete, the adjudicating authority must reject the application Under Section 9(5)(2)(d) if notice of dispute has been received by the operational creditor or there is a record of dispute in the information utility. It is clear that such notice must bring to the notice of the operational creditor the "existence" of a dispute or the fact that a suit or arbitration proceeding relating to a dispute is pending between the parties.

Therefore, all that 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 exists in fact and is not spurious, hypothetical or illusory, the adjudicating authority has to reject the application.”

[emphasis supplied]

24. The AA has relied on this judgment and concluded as follows:

“....

13. There are pre-existing disputes between the parties prior to issuance of Demand Notice dated 31.12.2021. The CD has addressed various communications denying its liability of outstanding amount as claimed by Operational Creditor. Such communications of CD are listed below:

- i. Communication dated 2.3.2020;
- ii. Communication dated 20.6.2020 (Pg.81).

From these communications, it is clear that the CD has denied the liability of outstanding amount as claimed by Operational Creditor and that the work was not completed. It is settled law that the CD denying its liability of outstanding amount prior to issuance of demand notice amounts to pre-existing dispute.”

[emphasis supplied]

Order

25. In the facts and circumstances of the case, we do not find that the dispute raised is spurious, hypothetical or illusory. Thus we do not find any infirmity in the orders of the AA and accordingly the appeal is dismissed. All related IAs pending, if any, are closed. No order as to costs.

**[Justice Ashok Bhushan]
Chairperson**

**[Barun Mitra]
Member (Technical)**

**[Arun Baroka]
Member (Technical)**

**New Delhi.
April 08, 2025.**

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