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

**Company Appeal (AT) (Insolvency) No. 248 of 2024**

**[Arising out of order dated 06.12.2023 passed by the Adjudicating Authority, National Company Law Tribunal, Mumbai Bench, Court- VI in C.P. No. 2342/IBC/MB/2018]**

**IN THE MATTER OF:**
**Khimji Poonja Freight Forwarders Pvt. Ltd.**
74, Meadows Street
Nagindas Master Road,
Fort Mumbai-400001

**...Appellant**

**Versus**
**M/s Ingram Micro India Pvt. Ltd.**
5th Floor, B Block, Godrej IT Park
02, Godrej Business District Pirojsha Nagar,
Vikhroli (W) Mumbai-400079**.** **...Respondent**

**Present:**

**Appellant:** **Mr. Krishnendu Datta, Sr. Advocate with Mr. Mohan Jay Kar, Mr. Shivek Trehan, Ms. Pooja Yadav and Mr. Rajat Sinha, Advocates.**

**For Respondents:** **Mr. Kedar Wagle, Advocate.**

## J U D G M E N T

## [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 06.12.2023 (hereinafter referred to as '**Impugned Order**') passed by the Adjudicating Authority (National Company Law Tribunal, Bench-VI, Mumbai)

in CP(IB) No.2342/IBC/MB/2018. By the Impugned Order, the Adjudicating Authority has dismissed the Section 9 petition filed by the Appellant-Khimji Poonja Freight and Forwarders seeking to bring the Corporate Debtor-M/s Ingram Micro India Pvt. Ltd. under the rigours of Corporate Insolvency Resolution Proceedings ('**CIRP**' in short) on the grounds of pre-existing dispute. Aggrieved by this impugned order, the present appeal has been preferred.

**2.** The Learned Senior Counsel for the Appellant making his submissions on the factual matrix stated that Appellant/Operational Creditor was engaged in the business of Freight Forwarding and related services. The Appellant had entered into a Customs Clearance Agreement ('**CCA**' in short) on 27.11.2007 with Respondent/Corporate Debtor for clearing and forwarding goods of the Respondent. Subsequently on 22.10.2009, the two parties entered into an Agency Agreement vide which the Appellant was responsible for claiming and obtaining refund of Special Additional Duty ('**SAD**') on behalf of the Corporate Debtor. The Appellant also discharged other contracts of the Respondent and maintained a common running account for this purpose though there was no specific understanding as such regarding the payment modalities.

**3.** It was further submitted that the Appellant raised invoices from time to time in respect of CCA and Agency Agreement. 8 SAD invoices pertaining to the period September 2010 to March 2011 raised by the Appellant under the Agency Agreement remained unpaid amounting Rs. 35,81,419/-. The Appellant sent a series of reminders to the Corporate Debtor between 2011 to 2016 to clear the entire outstanding amount of Rs. 36,68,148/- only including

the amount due under the aforementioned 8 SAD invoices but these emails were not responded to. Since no further payment was forthcoming, the Appellant issued a statutory notice on 22.04.2016 to the Respondent under Sections 433 and 434 of the Companies Act, 1956. Subsequently on 15.12.2017, a Demand Notice under Section 8 of the IBC was issued seeking payment of Rs. 1,46,11,515/- only comprising of principal amount of Rs. 36,68,148/- only and interest @ 21% p.a. amounting to Rs. 1,09,43,366/- only. However, the Respondent wrongfully denied the claim on the ground that on account of breach of the Agency Agreement the same stood terminated vide their letter dated 19.07.2011 and denied the payment of any outstanding operational debt. Hence, Section 9 application was filed by the Appellant on 20.06.2018 which was however wrongly rejected by the Adjudicating Authority without any application of mind on the grounds of pre-existing dispute raised by the Respondent. It was emphatically asserted that in the absence of any written termination of the Agency Agreement which was a pre-requisite for valid termination, the Section 9 application of the Appellant could not have been rejected on the ground of pre-existing dispute by the Adjudicating Authority.

**4.** Assailing the impugned order, it was contended that the Appellant had continued to provide services to the Respondent even after alleged termination of the Agency Agreement on 19.07.2011. As the Respondent had continued to avail the services from 2011 to 2015 without any demur or protest it was liable to pay the outstanding dues. It was further argued that in a meeting held on 09.04.2015 it was mutually decided that the Respondent would

release payment under the 8 SAD invoices by 23.04.2015. As the Minutes of Meeting ('**MoM**') were duly signed by both parties, it signifies that the Respondent implicitly admitted the liability to pay the outstanding dues. It was pointed out that even for argument's sake, if it is accepted that there was a dispute surrounding the SAD claims and therefore excluded, yet the claims under CCA, on which there are no disputes, aggregate to Rs. 1,65,618/- only which amount is above the threshold level of Rs. 1 lakh prescribed under Section 4 of IBC. Hence, this outstanding amount was sufficient for admission of Section 9 application.

**5.** It was contended that the grounds of pre-existing dispute raised by the Respondent were illusory and created only to wriggle out from clearing the outstanding liability. The Adjudicating Authority had erroneously admitted the Section 9 application without looking into the plausibility of the alleged dispute.

**6.** Making counter submissions the Learned Counsel of the Respondent vehemently contended that the Appellant had clearly breached clause 7 of the Agency Agreement which is the fountainhead of pre-existing dispute between the two parties. It was submitted that it is an undisputed fact that in March 2011, the CBI had arrested some officials of the Appellant which had also led to summoning of some of the officials of the Respondent by the CBI for investigation. This conduct of the Appellant tantamounted to violation of the clauses of the Agency Agreement and this incident ultimately led to termination of the Agency Agreement. Consequentially, the Respondent had informed the Appellant by a letter dated 19.07.2011 that bills for SAD will not

be processed. This letter was acknowledged by the Appellant on 09.08.2011. This acknowledgement letter of 09.08.2011 also contained a request from the Appellant to the Respondent to review their decision of not to pay for the SAD invoices. It is therefore clear that the Respondent had disputed the SAD invoices which was very much in the knowledge of the Appellant. The Adjudicating Authority had therefore rightly held that termination of Agency Agreement was a clear sign of pre-existing dispute and that there was no need to go into further investigation as it neither had any jurisdiction nor was it required to adjudicate whether the termination of the Agency Agreement was lawful or not.

**7.** We have duly considered the arguments advanced by the Learned Counsel for the parties and perused the records carefully. The short point which is before us for consideration is whether there was a pre-existing dispute between the two parties with regard to the operational debt.

**8.** It is the case of the Appellant that the Adjudicating Authority had erred in holding that there was a breach of clause 7 of the Agency Agreement and that this breach led to termination of the Agency Agreement by the Respondent. There was no documentary proof to substantiate the written termination of the Agency Agreement which was a *sine qua non* for valid termination of the Agency Agreement. It was denied that any written letter or notice of termination of the Agency Agreement was sent to them by the Corporate Debtor. It is contended that the breach of Agency Agreement as defence of pre-existing dispute taken by the Respondent is not tenable. Furthermore, the fact that the Respondent had made a series of payment to

the Appellant against the running account till 2014, it shows that the business relationship between the two parties had continued even after 2011. Hence the amounts claimed by the Appellant with supporting invoices was legally due and payable for the period 2011-2014. It has also been argued that the Adjudicating Authority had mistakenly overlooked the fact that following the MoM drawn up between the two parties on 09.04.2015, the Respondent had themselves agreed to advise for release of dues under the Agency Agreement by 24.04.2015. Moreover, as this MoM was not disputed by the Respondent, the Corporate Debtor had implicitly admitted their liability therefore cannot deny payment by raising the bogey of pre-existing disputes.

**9.** It is also contended by the Learned Sr. Counsel for the Appellant that the purported termination of the Agency Agreement happened subsequent to the letter of 12.03.2015 sent by them to the Respondent asking for review of their business relationship. Hence, the Respondent was still liable to pay the debt under the invoices raised from 2010 to 2014 as they had accrued prior to the purported termination. It is also contended that several reminder emails were also sent by the Appellant for payment of outstanding dues which have been placed at pages 168-195 of the Appeal Paper Book ('**APB**' in short). The fact that the Respondent did not deny the demand raised in the reminder emails shows that it was a deemed acceptance of liability on their part.

**10.** Before dwelling on the facts of the present case and weighing the rival submissions of the two parties, a quick glance at the relevant statutory construct of IBC would be useful. Section 8 of the IBC requires the Operational Creditor, on occurrence of a default by the Corporate Debtor, to

deliver a Demand Notice in respect of the outstanding operational debt. Section 8(2) lays down that the Corporate Debtor would have to bring to the notice of the Operational Creditor, the existence of dispute, if any within a period of 10 days of the receipt of the Demand Notice. Section 9 of IBC provides for the further course of action to be followed post issue of Demand Notice by the Operational Creditor. Under Section 9(1), if the Operational Creditor does not receive payment or any notice of the dispute from the Corporate Debtor, he may file an Application under Section 9(1) of the IBC.

**11.** In the present case, it is an undisputed fact that the demand notice was issued by the Operational Creditor on 15.12.2017 and notice of dispute was raised by the Corporate Debtor on 26.12.2017. It is also an undisputed fact that in the present matter the Operational Creditor did not receive any further payment from the Corporate Debtor and therefore proceeded to file an application under Section 9 of IBC on 20.06.2018.

**12.** Coming to the notice of dispute raised by the Corporate Debtor on 26.12.2017 in response to the Demand Notice which has been placed on record at pages 235 of the APB, we find that the Corporate Debtor has categorically denied that any payment was due and payable to the Operational Creditor. We also find that in the reply notice, the issue of existing dispute has also been raised which is to the effect:

> *"…….. 4. Further and without prejudice to the aforesaid, you are well aware that* ***there is an existing dispute in respect of your alleged claim*** *in view of your admitted and acknowledged breach of the agency Agreement entered into between our Client and you. You are also well aware of the fact that* ***the Agency Agreement was terminated in view of your breach of the terms of the Agency Agreement, which you have admitted and acknowledged.*** *Further, you are also aware of the fact that by virtue of the said breach*

*of clause 7 of the Agency Agreement,* ***invoices raised by you for the work of SAD refunds****, that relate to matter in dispute before the Special Judge, Mirzapur, Ahmadabad more particularly case Nos. 1/2012 and case no. 22/2011 and all other alleged claims* ***have been forfeited consequent to the termination of the Agency Agreement by our Client*** *which fact also intimated to you and acknowledge by you. The Matrix of facts that has given rise of the dispute is detailed herein under:*

*a. You are aware that there was an Agency Agreement executed between our clients and you [herein after referred to as "****said Agreement****"]. By the said Agreement you were required to discharge the obligations in accordance with terms recorded therein.* ***By virtue of Clause 7 of the said Agreement you were required to refrain from making payments to any government officials for the purpose of securing any advantage either in favour of our Clients or otherwise****. Clause 7 of the said Agreement has been reproduced herein below for your ready reference: ……*

*b.* ***In breach of material representation as contained in clause 7.1 of the said Agreement, you entered into a series of transactions of payment of illegal gratification with the officers of the Customs*** *and consequently, several officers of the Customs and Senior Officers of your Company were arrested by the Central Bureau of Investigation [hereinafter referred to as "CBI"]. …..*

*f. Much to the dismay of our Client even Senior Officers, including the Managing Director of our Clients were summoned by the CBI court and asked to furnish documents under u/s 91 of the Criminal Procedure Code, 1973 in respect of the work entrusted to you under the said Agreement, which fact you are admittedly well aware of. The executives had to attend the office of CBI on number of occasions. They also had to engage services of Advocates at great costs and expense to them.* ***You have not reimbursed and/or indemnified our Client in respect of the expenses incurred by them and the hardships they had to undergo to provide information and documents sought by CBI. Not to mention substantial loss of management time for no fault of our Client****."*

*j Despite the unambiguous and unequivocal communication terminating your services you persisted on meeting our Clients*

*and made an attempt to revive the business relations with our Clients. On their part our Client has paid all the dues relating to the assignment of other work to you. The forfeiture of the sums under the said Agreement was known to you way back in the year 2011 and it is for the same reason you have been making demands for liquidation of your alleged dues through emails wherein you have specifically excluded the sums relating to "**SAD Claims**", the claim that is subject matter of the notice of demand."*

(Emphasis supplied)

**13.** From a plain reading of the above notice of dispute, we are compelled to notice that the Corporate Debtor clearly articulated how the Agency Agreement was breached by the Appellant leading to forfeiture of their payments. It is an undisputed fact that in March 2011, the CBI had arrested some officials of the Appellant for paying illegal gratification. It is therefore the case of the Corporate Debtor that in terms of Clause 7(2) of the Agency Agreement, this constituted a breach of the said Agreement. Hence, they claimed to have terminated the Agency Agreement and consequently payments related to SAD invoices were also withheld by them. The Notice of Dispute thus makes it clear that the Corporate Debtor had not only denied their liability to pay the SAD claims but also laid the edifice of the ongoing disputes between the two parties.

**14.** Given this backdrop, it will be useful to find out how the Adjudicating Authority has considered the spectrum of facts and passed the impugned order rejecting the Section 9 application on the grounds of pre-existing disputes. The relevant portion of the impugned order is as extracted hereunder:

*"26. As regards the pre-existing dispute, the Corporate Debtor has drawn our attention to Clause 7 of the Agency Agreement which is reproduced below:-*

> *"7.1 In performing this agreement, Agent shall comply with all applicable laws, rule and regulations of the Territory and shall indemnity and save Ingram Micro harmless from agents's failure to do so. Furthermore, if this agreement, the relationship created hereby of the performance hereof is determined by Ingram Micro to be contrary either. (1) to the laws, rules or regulations of the Territory now or hereafter in effect, or (2) to Agent's representations set forth in this clause, this agreement may be terminated effective immediately by Ingram Micro upon written notice to agent and in such case, shall be deemed null and void from its inception and any compensation paid or accrued hereunder shall be forfeited by agent, and no further compensation payments paid or accruals shall be made by Ingram Micro for Agent's account. In this regard, Agent recognizes that Ingram Micro has entered into this Agreement with agent in material reliance on the following representations made by agent that:*
>
> *Agent has not made, and will not make any direct or indirect payment, offer to pay or authorization to pay, any money, gift, promise to give, or authorization of the giving of anything of value to any government official or the family of any such official for the purpose of influencing an act or decision of the government or such individual in order to assist directly or indirectly, Agent or Ingram Micro in obtaining or retaining business or securing an improper advantage.*
>
> *7.2 Agent represents that the performance of this agreement is permitted under the laws of the Territory and agent has all required licenses, permits, authorizations or registrations and is otherwise fully qualified under the applicable laws and regulations of the territory to perform this agreement."*

*28. The Operational creditor had sent an email dated 12.03.2015 to the Corporate Debtor requesting the latter to review its decision not to process the bills which indicates that the Operational Creditor was informed/aware of the fact that*

*bills in respect of SAD claims would not be processed. Subsequently, the Agency Agreement with the Operational Creditor was terminated by the Corporate Debtor. Further, the Operational Creditor has in its email dated 12.03.2015 noted the decision of the Corporate Debtor for termination of services of the Operational creditor after personal hearing to its director but contended that the action of termination of its services was punitive.*

*29. We note that the Agency Agreement was terminated much prior to issue of statutory notice under section 433 of the Companies Act, 1956 or Demand Notice under Section 8 of the Code. Our attention was drawn to various emails in which the Operational Creditor had agreed to withholding of payments of its invoices pertaining to "SAD references". The Operational Creditor has also admitted to the fact that there was FIR against its officials along with those of the Customs Department.*

*30. Thus, it emerges that prima facie, there was breach of clause 7 of the Agency Agreement which led to the dispute between the parties and ultimately termination of the Agency Agreement. We neither have jurisdiction nor are otherwise required to adjudicate whether the termination of the Agency Agreement was lawful or not or whether the Operational Creditor under the present facts and circumstances is entitled to the balance payment or not as the proceedings before the Adjudicating Authority are of summary nature and any disputes relating to adjudicating of rights and liabilities of the parties are beyond the scope of the Adjudicating Authority under section 9 of the Code. As held by the Hon'ble Supreme Court in* ***Mobilox Innovations Private Limited Vs. Kirusa Software Private Limited (2018) 1 SCC 353,*** *what the adjudicating authority is to see 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".*

**15.** We however notice that the Appellant has assailed the impugned order and contended that the CBI proceedings were against officials of the Appellant

in their personal capacity and not against the Appellant company and hence cannot be a ground for dispute between the Operational Creditor and the Corporate Debtor. It was also asserted that the FIR filed by CBI did not relate to the 8 SAD invoices and hence these payments cannot be withheld. Moreover, in the absence of any written termination of the Agency Agreement, the termination was not a valid termination and hence cannot become a ground of pre-existing dispute.

**16.** We do not find much credence in the above argument raised by the Appellant in view of their own communication dated 09.08.2011 sent in response to a letter of 19.07.2011 admittedly sent by the Corporate Debtor regarding holding back of payments in view of the CBI investigations. The relevant excerpts of this communication which is found at page 136 of APB is as extracted hereunder.

> *"From: Jubi-KhimjiPoonjaFFPL(H.O)*
> *[mailto:jubi@khimjlpoonja.com)*
> *Sent: Tuesday, August 09, 2011 8:03 PM*
> *To: 'jalshankar.k@Ingrammicro.co.in'*
> *Cc: 'dilip Khimji poonja'; 'Dushyant Mulani"*
> *Subject: Agency Agreement - Government Projects – ADC*
>
> *M/s. Ingram Micro India Ltd.,*
> *Mumbai.*
>
> *Kind Attn: Mr.Jaishankar Krishnan - Menaging Director*
>
> *Dear Sir,*
>
> *Re:* ***Agency Agreement - Government Projects***
>
> *"**We are in receipt of your letter dated 19/07/2011** and have duly noted the contents thereof. In the said respect, we have to respectfully submit the following for your kind consideration.....*

> • ***Customs authorities*** *have taken due cognizance of the same and have immediately* ***reinstated our CHA License at all the Sectors, except Gujarat Sector****, as per the copy provided to your goodselves……..*
>
> • *Further, it may be noted that in none of the communications from CBI/Customs, is there any reference made about esteemed company, at all and hence there should not be any reasons for cause or concern by your goodselves. Further as per the provision of Section 7 of the Agreement, we have duly indemnified your esteemed company.*
>
> • *In view of the foregoing, we once again request your goodselves* ***to kindly review the matter appropriately for releasing of the payment of Rs.29,79,129.54****, which in any event is an amount due to us for services already rendered by us to you."*
>
> (Emphasis supplied)

The above letter to our minds clearly self-negates the contention of the Appellant of there being no dispute relating to payment of services discharged by them during 2011 to 2014. It is also pertinent to note that this letter clearly depicts that the payment related dispute had been raised as early as 19.07.2011.

**17.** That this issue of denial of payment and termination of Agency Agreement by the Corporate Debtor had continued to fester the business relationship of the two parties is reinforced by another communication sent on 12.03.2015 by the Appellant in which they have sought review of the termination of their services by the Corporate Debtor. This letter has been placed on record at pages 140-141 of the APB. The said communication also reads like an admission of aberration committed on their part and failure to meet the exacting standards of compliance expected by the Corporate Debtor

leading to the punitive action of termination of services. It is also pertinent to note that this letter again pre-dates the demand notice and relevant portions are extracted for convenience as under:

> *"From: JUBI-Khimji Poonja FPL[jubi@khimjipoonja.com]*
> *Sent: Thursday, March 12, 2015 2:37:34 PM*
> *To: 'jaishankar.k@ingrammicro.co.in'*
> *Cc: 'Blasé Dsouza@ingrammicro.com', 'DILIP MULANI', 'Dushyant Mulani'*
> *Subject: Business Meeting- Request for Review*
>
> *M/s. Ingram Micro Ltd., (IMIL)*
> *Mumbai.*
>
> *Kind Attn: Mr. Jaishankar Krishnan-Managing Director*
> *Dear Sir,*
>
> ***Re: Business Meeting-Request for Review***
>
> *".....**We have duly noted decision of your Management to terminate our services** with immediate effect due to reported compliance issue. In the said manner, we may reiterate our due submissions for the kind consideration of your goodselves and all concerned.*
>
> *.....After a long and fruitful association of more than 25 years with M/s. Ingram Mocro India Ltd., (Group) with satisfactory and unblemished track record, **there has been a reported aberration in 2011**, for which we have presented our goodselves to all your requisite system and compliance process checks to the best of our ability.*
>
> *..... We have also made our intentions very clear in support of your compliance objectives and **meeting your high and exacting standards** to the satisfaction of all concerned.*
>
> *.....In view of the same, much **as we appreciate your concern for ensuring strictest of compliance** but we would also take this opportunity to make our humble submissions that the intent and the spirit of the said process **would also entail an element***

> ***of proportionality of punitive action*** *to the alleged aberration/ incident.*
>
> *In the said matter in our humble opinion****, the punitive action (termination of services) appears to be a bit too harsh*** *and out of proportion of matter, looking at the totality of the circumstances. To give an analogy for a non compliance at pedestrian crossing, it would be unfair to give a capital punishment.....”*
>
> (Emphasis supplied)

**18.** It is a well settled proposition that for a pre-existing dispute to be a ground to nullify an application under Section 9, the dispute raised must be truly existing at the time of filing a reply to notice of demand as contemplated by Section 8(2) of IBC or at the time of filing the Section 9 application. In our considered opinion, from the material available on record, the dispute over payment of operational debt which has been claimed by the Appellant is writ large and this dispute also clearly precedes the issue of Demand Notice.

**19.** The Appellant has relied on the judgment of this Tribunal in ***Aroon Kumar Aggarwal Vs. ABC Consultants Pvt. Ltd***. in ***CA (AT) (Ins.) No. 409 of 2020*** to state that the pre-existing dispute has to co-relate with the amount claimed by the Operational Creditor. In the present facts of the case, the dispute revolves around the SAD invoices and the SAD invoices undisputedly form part of the claim on which the Section 9 application has been filed by the Appellant. Hence this judgment does not come to the aid of the Appellant. The reliance placed on the judgment of this Tribunal in ***Apurva Prasad Vs. Sanghvi Movers Limited*** in ***CA (AT) (Ins.) No. 648 of 2022*** also cannot assist the Appellant since in the present case the dispute was clearly raised prior to the issue of Demand Notice.

**20.** At this juncture, we wish to refer to the ***Mobilox*** judgement, which has been relied upon by the Adjudicating Authority wherein the Hon'ble Apex Court while interpreting Sections 8 and 9 of IBC has laid down the guiding principles on how to examine the existence of disputes between the parties. It may be useful to notice the relevant part of the judgement as reproduced below:

> *"51. 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."*

**21.** Keeping in mind the ratio of the ***Mobilox*** judgment and also that IBC bestows only summary jurisdiction upon the Adjudicating Authority, once plausibility of a pre-existing dispute is shown, it is not required of the Adjudicating Authority to make further detailed investigation. What has to be looked into is whether the defence raises a dispute which needs further adjudication by a competent court. It is well settled that in a Section 9

proceeding, the Adjudicating Authority is not to enter into final adjudication with regard to existence of dispute between the parties regarding the operational debt. A perusal of the impugned order shows that the Adjudicating Authority has taken notice of the Agency Agreement and its breach as the basis of pre-existing disputes and that this dispute came into the picture before the Demand Notice. Acknowledging its summary jurisdiction, the Adjudicating Authority has therefore rightly exercised caution in not treading into adjudicating the legality of the termination of the Agency Agreement.

**22.** From the reply notice as reproduced in paragraph (12); other available material on record in the APB and after hearing the rival contentions of both the parties, we are of the view that the Adjudicating Authority has made no mistake in taking cognizance of the fact that there clearly existed dispute between the two parties anterior to the date of demand notice and that there has been a consistent and clear denial on the part of the Corporate Debtor of their liability to discharge the obligations to pay. In the present factual matrix, we do not find any material which has been placed on record which substantiates that the defence raised by the Corporate Debtor was moonshine, spurious, hypothetical or illusory. It is well settled that in Section 9 proceeding, there is no need to enter into final adjudication with regard to existence of dispute between the parties regarding operational debt. Keeping in view that the present facts of the case indicates that the operational debt is disputed, the Adjudicating Authority has therefore correctly rejected the Section 9 application.

**23.** Given this backdrop, we have no reasons to disagree with the findings of the Adjudicating Authority. Considering the overall facts and circumstance of the present case, and in view of the foregoing discussion, we are satisfied that the Adjudicating Authority did not commit any error in rejecting the Section 9 Application filed by the Appellant. There is no merit in the Appeal. Appeal is dismissed. We however make it clear that it will remain open to the Appellant to resort to other remedies that may be available to it under any other law. No order as to costs.

**[Justice Ashok Bhushan]**
**Chairperson**

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

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

**Place: New Delhi**
**Date: 12.03.2024**

Ram N.