

IN THE NATIONAL COMPANY LAW TRIBUNAL

NEW DELHI, COURT-III

C.P. (IB) -223(ND)/2024

Order under Section 9 of the Insolvency and Bankruptcy Code, 2016 read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016.

IN THE MATTER OF:

M/s. XYLEM WATER SOLUTIONS INDIA PRIVATE LIMITED

Having Its Registered Office at:

Plot No. 731, GIDC Savli, Manjusar, Savli Road,

Vadodara- 391770, Gujarat

Through Authorized Representative:

Mr. Pankaj Nautiyal

.... Operational Creditor

VERSUS

M/s. UEE ELECTRICAL ENGINEERS PRIVATE LIMITED

Having Its Registered Office at:

43, 3rd Floor, GB road,

Delhi-110006

.... Corporate Debtor

Order Pronounced On: 20.12.2024

CORAM:

SHRI BACHU VENKAT BALARAM DAS, HON'BLE MEMBER (JUDICIAL)

SHRI ATUL CHATURVEDI, HON'BLE MEMBER (TECHNICAL)

APPEARANCES:

For the Operational Creditor: Mr. Neeraj Malhotra, Sr. Adv, Mr. Sukrit R

Kapoor, Mr. Jaskaran Singh Narula,

Mr. Navnit Kumar Advs.

For the Corporate Debtor: Mr. Pawan Bendra, Sr. Adv., Mr. Raghu Tandon,

Ms. Divya Bansal Advs.

ORDER

PER: BACHU VENKAT BALARAM DAS, MEMBER (JUDICIAL)

1. This is an Application filed under Section 9 of the Insolvency and Bankruptcy Code, 2016 ('the Code') read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 by M/s. Xylem Water Solutions India Private Limited ('Operational Creditor'), against the Corporate Debtor for the purpose of initiating Corporate Insolvency Resolution Process ('CIRP') against M/s. UEE Electrical Engineers Private Limited ('Corporate Debtor') for the total due amount of Rs. 8,36,55,715/- (Rupees Eight Crore Thirty-Six Lakhs Fifty-Five Thousand Seven Hundred Fifteen Only) as on 30.09.2023.

2. Submissions of the Operational Creditor

- i. The Operational Creditor is engaged in the business of providing services relating to water treatment plant & equipment, water supply, and drainage pumps to its customers. The Corporate Debtor is engaged and specializes in hydraulic & electrical EPC projects.
- ii. The Operational Creditor and the Corporate Debtor entered into a Memorandum of Understanding dated 30.01.2020 with the intent and objective to facilitate and assist the Corporate Debtor, to submit its proposal before the BUIDCo. (Bihar Urban Infrastructure Development Corporation), a Government of Bihar Undertaking. The role of the Operational Creditor as per the terms and conditions envisaged under the MoU was very limited and the entire transaction with BUIDCo. was only between the Corporate Debtor and BUIDCo. with the role of the Operational Creditor only limited to supply of Pump set and further assisting the Corporate Debtor in meeting the balance qualifying requirements for the NIT issued by BUIDCo.
- iii. The Corporate Debtor had issued revised Purchase Order/Letter of Authority bearing Reference Nos. UEE/XYL/BUIDCO/05 dated 04.05.2020 with reference to NIT No. 08/Mech./SB/2019-20 for "Supplying, installation & commissioning of Vertical Turbine

mixed/Axial flow, single impeller pump having following parameters complete set such as column pipes, spiders, line shafts, discharge Tee etc., complete with panel board and starter, etc". All complete with five years' operation and comprehensive Annual Maintenance and subsequent various corrigendum issued for NIT". In furtherance of the LOA dated 04.05.2020, the Corporate Debtor, further issued the Purchase Order bearing Reference Nos. UEE/XYL/BUIDC0/09 dated 11.05.2020, at a value of Rs. 10,18,78,759/- (Rupees Ten Crore Eighteen Lakhs Seventy-Eight Thousand Seven Hundred and Fifty-Nine only). A Firm Purchase Order bearing Reference No. UEE/XYL/BUIDC0/10 dated 12.05.2020 for "Supply of 19 no. HT and 2 no. LT motors for Vertical Turbine Pumps at various pump houses of BUIDCo., Patna as per reference NIT for Groups A1, A2 and A3", and the total price fixed for the said purchase order was at INR 4,95,00,000/- (Indian Rupees Four Crores Ninety-Five Lakhs only).

- iv. In furtherance of the Purchase Orders and the work assigned and the services provided thereunder, the Operational Creditor raised invoices for the work completed, which are due and liable to be paid by the Corporate Debtor. It is further to be noted that the even upon perusal of the terms of payments as highlighted above, the payments were to be made on pro-rata basis to the Operational Creditor, against which the Corporate Debtor have clearly defaulted and have failed to clear the pending payments of the Operational Creditor till date.
- v. With respect to the work assigned, there was substantial revision which was discussed in detail vide email communication dated 21.10.2020. The said revision in the suspension length of the pump would have price implications to the tune of Rs. 1,48,31,400/- (Rupees One Crore Forty-Eight Lakhs Thirty-One Thousand and Four Hundred only). It is further emphasized that the revised work and the financial implication of the same were duly addressed by the Operational Creditor to the Corporate Debtor vide email communication dated 01.12.2020, which addressed the same on a positive note and agreed by the Corporate Debtor.

- vi. It is submitted that the Corporate Debtor, have failed to clear the Invoice amount along with claim overdue amount, amounting to a sum of Rs. 5,24,40,784/- (Rupees Five Crores Twenty-Four Lakhs Forty Thousand Seven Hundred and Eighty-Four only). That along with the aforementioned sum, the Corporate Debtor is liable to pay the Operational Creditor another sum of Rs. 1,48,31,400/- (Rupees One Crores Forty-Eight Lakhs Thirty-One Thousand and Four Hundred only) towards the price implication of the change in suspension length of the pump. The said payments have been long overdue, and the Operational Creditor is claiming Rs. 1,63,83,531/- (Rupees One Crore Sixty-Three Lakhs Eighty-Three Thousand Five Hundred and Thirty-One only), calculated at the rate of 10% per annum on the due invoice amount.
- vii. It is submitted that the Operational Creditor, has been following up for its due payments from the Corporate Debtor, on numerous occasions, vide email communication, telecommunication, and written communications as well, which has had no bearing on the Corporate Debtor. The Corporate Debtor have deliberately avoided the payment of the outstanding dues on one or the other context and have completely neglected the payment terms as were agreed between the Corporate Debtor and the Operational Creditor at the time of placing of the Purchase Orders, due to which the Operational Creditor has been facing extreme financial constraints.
- viii. The Operational Creditor was constrained to issue a Demand Notice dated 05.09.2022 through courier seeking payment of pending dues to the tune of Rs. 8,18,35,382/- (Rupees Eight Crores Eighteen Lakhs Thirty-Five Thousand Three Hundred and Eighty-Two only) together with interest calculated at the rate of 10% per annum.
- ix. The Corporate Debtor on 20.09.2022, issued an untenable reply wherein the Corporate Debtor, have denied all the pecuniary liability accrued against them, and further directed the Operational Creditor to recall its Demand Notice dated 05.09.2022.

- x. That having received baseless and false reply from the Corporate Debtor, the Operational Creditor was forced to issue a Rejoinder Notice dated 08.11.2022 wherein the Operational Creditor cleared all the factual intricacies pertaining to the dispute at hand and once again put forth its demand seeking clearance of the outstanding dues at the earliest. The fact that there has been a lack of response from the Corporate Debtor in regards to the Rejoinder Notice dated 08.11.2022 issued by the Operational Creditor.
- xi. The Corporate Debtor, has failed to provide any updates on the payments and utterly failed to provide any response on the outstanding payments. Further, the Corporate Debtor has issued the Letter dated 29.07.2023 seeking for certain rectifications of the defects with respect to one of the pumps installed by the Operational Creditor, without providing any clarity on the pending payments that have remained due since long. The said Letter dated 29.07.2023 was duly replied by the Operational Creditor by way of its Letter dated 01.08.2023 addressing the subject matter of the defective pump and further seeking for the release of the pending payments at the earliest from the Corporate Debtor.
- xii. Thereafter there was no response from the Corporate Debtor, due to which the Operational Creditor was constrained to issue the Demand Notice in Form 3 under Section 8 of the Insolvency and Bankruptcy Code, 2016 dated 03.08.2023 seeking payment of pending dues to the tune of Rs. 8,24,21,129/- (Rupees Eight Crores Twenty-Four Lakhs Twenty-one Thousand One Hundred and Twenty-Nine only).

3. Submissions of the Corporate Debtor

The Corporate Debtor has filed Reply Affidavit dated 30.07.2024 denying the averments and contentions raised in the application.

- i. It is submitted that the alleged debt claimed by the Applicant does not fall within the purview of 'operational debt'. Moreover, the Applicant does not fall within the definition of operational creditor and the alleged claim

which is sought to be made cannot be considered as an operational debt within the provisions of the IBC. There is no default on the part of the Respondent and no amount is legally due or payable to the Applicant, as of now. Even otherwise, no goods or services as stated by the Applicant were supplied / rendered to the Respondent so as to entitle the Applicant to fall within the purview of Section 9 of the IBC. The said goods have been supplied to BUIDCo. pursuant to a partnership entered into between the Applicant and with the Respondent. The payments are pending from BUIDCo. and therefore, recoverable from them.

- ii. The Respondent in terms of Section 8(2) (a) of the IBC vide its reply dated 20.09.2022 brought to the notice of the Applicant an 'existence of dispute' with regards to the alleged claim as claimed by the Applicant vide its Demand Notice dated 05.09.2022.
- iii. The Respondent in its reply dated 20.09.2022 to the demand notice dated 05.09.2022 of the Applicant has clearly stated that the amounts claimed by the Applicant have not become due and payable. The said reply clearly reveals the existence of a dispute and the same clearly requires further investigation, whereby evidence is required to be laid and the rival allegations of the parties have to be proved by the relevant parties. The present issues are therefore not fit for a summary adjudication and require to be relegated to be decided through arbitration. The Corporate Debtor had sent a reply dated 16.12.2023 for the demand notice dated 01.12.2023.
- iv. The amounts that the Applicant is claiming have to be paid by BUIDCo. and not by the Respondents. The project for which the Applicants have partnered with the Respondent is yet to be completed. The Applicant and Respondent are jointly and severally Responsible to BUIDCo. The payment terms for the goods supplied by the Applicant are governed by the NIT issued by BUIDCo., which have been duly accepted by the Applicant at the time of applying for tender. The Contracts and Documents issued by BUIDCo. name the Applicant as a MOU partner.

v. The aforesaid details have been duly incorporated in the work orders duly executed by BUIDCo. wherein the Applicants have been duly described as the MOU partners. Moreover, BUIDCo. has issued three work orders and the entire work allotted was divided in Group A-1, All and A-III.

vi. As per the payment terms of BUIDCo the following payments have become due and payable to the Applicants: -

- a) *The Respondent in the Group A-I were liable to supply and install 9 Pump sets at several locations. In the Group A-I none of the sites have been handed over by BUIDCo., where pumps have to be installed and only stage 1 and 2 have been achieved. Therefore, only 60% Bill of the Applicant are liable to be cleared after deducting 8% security deposit. Therefore, the Applicant is liable to receive only 55.2% of its bills. Accordingly, the total pump cost in Group A-I is Rs. 5,55,56,773/- and out of the said amount the Applicant is entitled to receive Rs. 3,06,67,339/-.*
- b) *The Respondent in the Group A-II is liable to supply and install 10 Pump sets at several locations. In the Group A-II out of 10 pumps only two have been installed and remaining sites where pumps have to be installed have not been handed over by BUIDCo, and only stage 1 and 2 have been achieved. Therefore, for the two pumps that have been installed the Applicants are entitled to receive 92% Payment after deducting the Security Deposit Amount and for the remaining sites, 55.2% of the Bill of the Applicant are liable to be cleared after deducting 8% security deposit. Accordingly, the total Pump set cost in Group A-II is Rs. 5,21,76,951/- and out of the said total the Applicant is entitled to receive Rs. 3,27,35,139/-.*
- c) *The Respondent in the Group A-III was liable to supply and install 13 Pump sets at several locations. In the Group A-III, out of 13 pump only 7 have been installed and remaining sites where pump 6 pump sets have to be installed have not been handed over by BUIDCo, and only stage 1 and 2 have been achieved. Therefore, for the 7 pumps that have been installed the Applicants are entitled to receive 92% Payment after deducting the Security Deposit Amount and for the remaining sites, 55.2% of the Bill of the Applicant is liable to be cleared after deducting 8% security deposit.*

Accordingly, the total Pump set cost in Group A-III is Rs. 4,36,45,035/- and out of the said total the Applicant is entitled to receive Rs. 3,37,46,936/-.

d) The Applicant is therefore entitled to receive a total amount of Rs. 9,71,49,414 and Rs. 11,46,36,308 along with GST. The Respondent herein have paid a total amount of Rs. 12,02,02,811/- to the Applicant. The Respondents have therefore clearly paid Rs. 55,66,503/- over and above the amount due and payable to Applicant.

vii. Moreover, the pumps at several places have yet to be installed as the construction of the pump stations has not been completed and they have not been handed over by BUIDCo. to the Respondent. The Respondent has been constantly following up with BUIDCo. for locations and in this regard sent a letter dated 17.05.2024 to BUIDCo. raising the concerns of inordinate delay. The Applicant being jointly liable and being bound by the payment terms of the BUIDCo. being the ultimate employer, cannot seek 100% Payment at the current stage.

viii. Further, Applicant is well versed with the ground realities of the Project since the Applicant was a part of the 'Pre-Bid' meetings held under the chairmanship of the Secretary, UDHD, Bihar. The Applicant has supplied the complete materials of pump sets and motors even by waiving off the mandatory provisions of LC. Had the LC provision been followed strictly, the Respondent would have procured the materials only for the pump house locations which were made available for erection/installation.

ix. Further, notwithstanding the one-sided payment terms imposed by the Applicant in the Purchase Order between the Applicant and Respondent, the Applicant being a joint bidder is eligible to receive its payment in accordance with the payment terms of BUIDCo. Work Contract, i.e. 60% on supply, 30% on erection/installation and balance 10% on commissioning & testing. Hence, considering that 90% payment is receivable for 30% of the locations/Pump Sets, where erection is completed and 60% payment for 70% of the locations, where no erection

has even started, the net receivables from BUIDCo. works out to be 69% of the Work Contract value.

x. Additionally, the Applicant is well aware of the Agreement with BUIDCo. as the Agreement of BUIDCO is with the M/s. UEE Electrical Engineers Pvt. Ltd. (MoU with M/s. Xylem Water Solution India Pvt. Ltd.). Despite there being existence of dispute between the parties as detailed above, the applicant filed the present proceedings, which deserves to be dismissed.

4. Analysis & Findings

i. We have heard the Learned Counsel appearing on behalf of the Operational Creditor and the Corporate Debtor and perused the records.

ii. It is the admitted case of both the parties that Bihar Urban Infrastructure Development Corporation Ltd. ("BUIDCo.") issued Short E-Tendering Notice vide NIT No.-08/Mech./SB/2019-20 inviting e-tender for Supplying, installation, commissioning, testing with 5 years maintenance of different types of pumps, transformers, D.G. sets, Trolley mounted portable diesel driven C/F self priming pumps for different Drainage Pumping Stations (DPS) from experienced and reputed manufacturers/authorized dealers who have done such work in Govt./PSU with proven capabilities and demonstrated performance.

iii. Pursuant to the said E-Tender Notice, the Corporate Debtor submitted its bid to the BUIDCo. The Corporate Debtor also entered into a MoU with Operational Creditor for executing the work. The initial recital of the said MoU are as under:

a. "WHEREAS the Owner, BUIDCo, a Government of Bihar Undertaking, proposes to issue/issued an NIT (herein after referred to as the said NIT) inviting bids from the individual Bidders for undertaking the work of Supplying, installation & commissioning of Vertical Turbine mixed/Axial flow, single impeller pump having following parameters complete set such as column pipes, spiders, line shafts, discharge Tee etc. complete with panel board and starter etc. all complete with 5 (Five) years

operation and comprehensive Annual maintenance, Group A-I (herein after referred to as the said works).

- b.** *WHEREAS the said NIT enables submission of a bid by a Bidder with MOU Partner subject to fulfilment of the stipulations specified in the said NIT.*
- c.** *WHEREAS M/s. UEE Electrical Engineers Pvt. Ltd. (The First Party, i.e. the Bidder) will submit its proposal in response to the aforesaid invitation to bid by the Owner for Supplying, installation & commissioning of Vertical Turbine mixed / Axial flow, single impeller pump having following parameters complete set such as column pipes, spiders, line shafts, discharge Tee etc. complete with panel board and starter etc. all complete with 5 (Five) years operation and comprehensive Annual maintenance as detailed in the Bid doc. No. 08/Mech./SB/2019-20 for Group No. A-I.*
- d.** *WHEREAS M/s. UEE Electrical Engineers Pvt. Ltd. (The First Party, i.e. the Bidder) is meeting eligibility requirements along with MOU Partner (as detailed in the NIT) and in order to fully meet the qualifying requirements of NIT, this MOU is being entered into with Mis Xylem Water Solutions India Private Limited (The Second Party, the MOU Partner), who fully meet the balance part of the said works (manufacturer's qualifying requirement and supply of pump set).*
- e.** *WHEREAS the First Party and the Second Party are contractors/manufacturers engaged in the business of carrying out various items of works. Whereas the two parties have agreed to constitute themselves into a MOU for the purpose of carrying out the said works and that the MOU will be continued till the completion of the works in all respects.*
- f.** *WHEREAS the parties have agreed to certain terms and conditions in this regard.”*

iv.As per the said MoU the Corporate Debtor is required to submit the bid to the BUIDCo on meeting the eligibility requirements and the MoU was entered into for the purpose of carrying out the works as per the tender.

The Clause-5 of the MoU reads as under:

"As per the said clause, both the parties to the MoU will be jointly and severally liable to BUIDCo in case of any default in execution of the work"

v.It is also the admitted case of the parties that several work orders were issued by the Corporate Debtor to the Operational Creditor. The Operational Creditor on completion of the work as per the said work order has raised invoices during the period from 29.10.2020 to 28.03.2021. The total outstanding amount to the tune of Rs. 8,36,55,715/- (Rupees Eight Crores Thirty-Six Lakhs Fifty-Five Thousand Seven Hundred and Fifteen only) includes three components, these are: Principal outstanding amounting to Rs. 5,24,40,784/- (Rupees Five Crores Twenty-Four Lakhs Forty Thousand Seven Hundred and Eighty Four only) and in addition to the same, the Corporate Debtor is liable to pay the Operational Creditor another sum of Rs.1,48,31,400/- (Rupees One Crore Forty-Eight Lakhs Thirty-One Thousand and Four Hundred only) towards the price implication. In addition to the said two components to the total outstanding, the outstanding amount also includes interest payment towards debt due amounting to Rs. 1,63,83,531/- (Rupees One Crore Sixty-Three Lakhs Eighty-Three Thousand Five Hundred and Thirty-One only) as of 30.09.2023.

vi.The defense raised by the Respondent is that the Applicants are liable to receive their payment on the basis of the said work orders as and when released by BUIDCo. The said project is still incomplete as BUIDCo. has not handed over the sites for installation of pumps and the current status of the sites as detailed in letter dated 17.05.2024 sent by the Respondent to the BUIDCo. The Ld. Counsel for the Corporate Debtor relied upon Clause-5 and the terms and conditions of the MoU which states that both Operational Creditor and Corporate Debtor are jointly and severally liable to BUIDCo.

vii. Upon perusal of the payment terms and the invoices raised, we are of the considered view that the language used in Clause-5 clearly shows that in case of any default in the execution of the work, both the parties will be jointly and severally liable to BUIDCo, however, there is no mention about the delayed payment. Therefore, it cannot be said that the Corporate Debtor is not liable to pay the Operational Creditor its dues as per the invoices raised by the Operational Creditor, particularly because, the invoices are not disputed by the Corporate Debtor and part payment has already been made. It is an admitted fact that principal amount outstanding is Rs. 5,24,40,784/- (Rupees Five Crores Twenty-Four Lakhs Forty Thousand Seven Hundred and Eighty Four only). Therefore, it is in itself well above the threshold as provided for under Section 4 of the Code. Hence, the present Application, in view of the admission made by the Corporate Debtor with regards to the outstanding dues payable to the Operational Creditor, ought to be admitted by this Tribunal.

viii. The Ld. Counsel for the Respondent/Corporate Debtor has also raised an objection that the Demand Notice dated 03.08.2023 was not served upon the Respondent as per the tracking report filed by the Applicant.

ix. The Ld. Counsel for the Applicant negated the said objection and submitted that the pre-requisite of Section 8 has been duly complied with and as per Rule 5(2) of the IBBI Rules, the Demand Notice under Section 8 of the Code was duly sent via courier to the Registered Address of the Corporate Debtor and in addition also sent vide E-mail on 03.08.2023 at uee.engg@gmail.com, stripathi.uee@gmail.com and amansehgal.uee@gmail.com. Mr. Aman Sehgal is the Director of the Corporate Debtor as per the Master Data available on Ministry of Corporate Affairs website which has been duly produced by the Operational Creditor as Annexure 2 of the Application under Section 9 of the Code while the copy of the email communication dated 03.08.2023 has been produced by the Operational Creditor as Annexure C of the Compliance Affidavit filed on 11.05.2024 before this Tribunal.

- x. Thus, it is observed that the Operational Creditor has duly complied with the requisite service of the Demand Notice under Section 8 of the Code, and hence there is no lacunae that could benefit the Corporate Debtor in this regard before this Tribunal as per the law laid down by the Hon'ble Supreme Court in the case of **Greater Mohali Area Development Authority and Ors. v. Manju Jain and Ors.**, reported in (2010) 9 SCC 157.
- xi. The Ld. Counsel for the Corporate Debtor also raised an objection that the Applicant has concealed the fact that the Applicant has themselves invoked Arbitration under Section 21 of the Arbitration and Conciliation Act, 1996 vide their notice dated 06.12.2022 sent to the Respondent vide email dated 08.12.2022. He also placed reliance on the Order passed by the Hon'ble NCLAT in the case of **Balaji Enterprises Vs. Gammon India Limited & Ors.** 2017 SCC Online NCLAT 574 where it has been clearly held that once a notice under Section 21 of the Arbitration & Conciliation Act, 1996 has been issued by the Operational Creditor, the petition filed after issuance of Demand Notice under Section 8 of the Code is not maintainable.
- xii. The Ld. Counsel for the Operational Creditor negated the objection and submitted that the Corporate Debtor failed to respond to the Notice under Section 21 of the Arbitration and Conciliation Act, 1996. Thereafter, an application for the appointment of arbitrator was not filed. As such, there are no pending arbitration proceedings between the Corporate Debtor and the Operational Creditor. He further placed reliance on the judgment of Hon'ble Supreme Court in the case of **Indus Biotech Private Limited v. Kotak India Venture (Offshore) Fund** reported in (2021) 6 SCC 436 which addresses a crucial issue regarding the interplay between insolvency proceedings under the Insolvency and Bankruptcy Code (IBC) and arbitration under the Arbitration and Conciliation Act. It is reiterated that the IBC prevails over other laws, as stipulated under Section 238 of the IBC. Consequently, the Adjudicating Authority is mandated to focus on the material presented within the Section 7 Application, including

evidence provided by the financial creditor and the corporate debtor's response. After perusal of the above mentioned judgments of Hon'ble Supreme Court and the Hon'ble NCLAT, it is observed that the Order passed by the Hon'ble NCLAT does not supersede the authority and legal position enunciated in the judgment of the Hon'ble Supreme Court and since there are no pending arbitration proceedings between the parties in the present case at the date of filing of the present Section 9 Application, and notice dated 06.12.2022 sent to the Respondent would not make the present application not maintainable. This Adjudicating Authority must evaluate the merits of the contentions put forth by both parties within the context of the insolvency application. Therefore, we are not inclined to dismiss the present application on this ground alone.

xiii. It is further observed that the Corporate Debtor raised the contention of pre-existing dispute for the first time in the reply to the Demand Notice issued under Section 8 by the Operational Creditor and there is no evidence on record to show that the Corporate Debtor has previously raised such a dispute as to delayed delivery by the Operational Creditor.

xiv. The Hon'ble Supreme Court in **Mobilox Innovations Pvt. Ltd. Vs Kirusa Software Private Limited**, reported in (2018) 1 SCC 353 and **Transmission Corporation of Andhra Pradesh Limited VS Equipment Conductors and Cables Limited** reported in (2019) 12 SCC 697 laid down that "IBC" was not intended to be a substitute to a recovery forum and that whenever there was existence of a real dispute, IBC provisions could not be invoked.

xv. As per the law laid down by Hon'ble Supreme Court, if the Corporate Debtor raises a plausible contention about a pre-existing dispute, which is not just a moonshine or feeble legal argument it would suffice for the Adjudicating Authority to reject the application filed under Section 9 of the Code, the Adjudicating Authority being precluded from determining as to whether the Corporate Debtor would be successful or not, with regard to the said dispute, at the time of decision making.

xvi. In the facts and circumstances of the instant case, we are of the view that the Corporate Debtor has not been able to raise a plausible contention regarding the pre-existence of “dispute” between the parties. Hence, the present application under Section 9 of the IBC, 2016 ought to be **admitted**.

5. Order

In view of the above facts and circumstances and the foregoing discussion, we are satisfied that the present Applicant fulfills the criteria laid down under Section 9 of the Code. It is accordingly, hereby ordered as follows: -

- i) The Application bearing **IB-223/ND/2024** filed by the Applicant under Section 9 of the Code r/w Rule 6 of the Adjudicating Authority Rules for initiating CIRP against the Respondent is hereby **admitted**.
- ii) We also declare a moratorium in terms of Section 14 of the Code. The necessary consequences of imposing the moratorium flows from the provisions of Section 14(1)(a), (b), (c) & (d) of the Code. Thus, the following prohibitions are imposed:
 - i. *“The institution of suits or continuation of pending suits or proceedings against the corporate debtor including execution of any judgment, decree or order in any court of law, tribunal, arbitration panel or other authority;*
 - ii. *Transferring, encumbering, alienating or disposing of by the corporate debtor any of its assets or any legal right or beneficial interest therein;*
 - iii. *Any action to foreclose, recover or enforce any security interest created by the corporate debtor in respect of its property including any action under the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002;*

iv. *The recovery of any property by an owner or lessor, where such property is occupied by or in the possession of the corporate debtor.*

[Explanation.-For the purposes of this sub-section, it is hereby clarified that notwithstanding anything contained in any other law for the time being in force, a licence, permit, registration, quota, concession, clearance or a similar grant or right given by the Central Government, State Government, local authority, sectoral regulator or any other authority constituted under any other law for the time being in force, shall not be suspended or terminated on the grounds of insolvency, subject to the condition that there is no default in payment of current dues arising for the use or continuation of the license, permit, registration, quota, concession, clearances or a similar grant or right during the moratorium period;]”

iii) It is made clear that the provisions of moratorium shall not apply to transactions which might be notified by the Central Government or the supply of the essential goods or services to the Corporate Debtor as may be specified, are not to be terminated or suspended or interrupted during the moratorium period. In addition, as per the Insolvency and Bankruptcy Code (Amendment) Act, 2018 which has come into force w.e.f. 06.06.2018, the provisions of moratorium shall not apply to the surety in a contract of guarantee to the corporate debtor in terms of Section 14(3)(b) of the Code.

iv) The Operational Creditor has not proposed any name for the Interim Resolution Professional (“IRP”). Therefore, we appoint **Mr. Vivek Sharma** as Interim Resolution Professional (“IRP”) having address: House no. 449, Jheel Khuranja, P.O. Krishna Nagar ,East Delhi-110051. His Email id is fcsviveksharma@gmail.com. His registration number is IBBI/IPA-002/IP-N01077/2020-2021/13442. The IRP shall file a valid Authorization for Assignment along with Written Consent in Form-2 and Registration Certificate within 3 days of the pronouncement of this Order.

- v) In pursuance of Section 13(2) of the Code, we direct the IRP, as the case may be to make a public announcement immediately with regard to the admission of this application under Section 9 of the Code. The expression immediately means within three days as clarified by Explanation to Regulation 6(1) of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.
- vi) During the CIRP period, the management of the Corporate Debtor shall vest in the IRP/RP, in terms of Section 17 of the IBC. The officers and managers of the Corporate Debtor shall provide all documents in their possession and furnish every information in their knowledge to the IRP within one week from the date of receipt of this order, in default of which coercive steps will follow. There shall be no future opportunity given in this regard.
- vii) The IRP is expected to take full charge of the Corporate Debtor's assets, and documents without any delay whatsoever. He is also free to take police assistance and this Court hereby directs the Police Authorities to render all assistance as may be required by the IRP in this regard.
- viii) The IRP or the RP, as the case may be shall submit to this Adjudicating Authority periodical report with regard to the progress of the CIRP in respect of the Corporate Debtor.
- ix) The Operational Creditor shall deposit a sum of Rs. 2,00,000/- (Rupees Two Lakhs only) with the IRP to meet the expenses arising out of issuing public notice and inviting claims. These expenses are subject to the approval of the Committee of Creditors ("CoC").
- x) In terms of the Code, the Registry is hereby directed to communicate a copy of the order to the Operational Creditor, the Corporate Debtor, the IRP and the Registrar of Companies, NCT of Delhi and Haryana, by Speed Post and by email, at the earliest but not later than seven days from today. The Registrar of Companies shall update his website by updating the status of the Corporate Debtor and specific mention regarding admission of this petition must be notified.
- xi) The Registry is further directed to send a copy of this order to the Insolvency and Bankruptcy Board of India ("IBBI") for their record.

xii)A certified copy of this order may be issued, if applied for, upon compliance with all requisite formalities.

No order as to costs.

Sd/-

**(ATUL CHATURVEDI)
MEMBER (TECHNICAL)**

Sd/-

**(BACHU VENKAT BALARAM DAS)
MEMBER (JUDICIAL)**