NATIONAL COMPANY LAW APPELLATE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

Company Appeal (AT) (Insolvency) No. 610 of 2025

[Arising out of the Impugned Order dated 04.04.2025 passed by the Adjudicating Authority, National Company Law Tribunal, New Delhi, Bench-VI in C.P.(IB) No. 422/ND/2023]

In the matter of:

NIMISH SANGHAVI
SUSPENDED DIRECTOR OF
CLOTHWARI PRINTING PVT. LTD.
RESIDENT OF House No.28, Road No.52,
Punjabi Bagh West, West-Delhi
Delhi - 110026
EMAIL: SHASHANK0487@GMAIL.COM

.... Appellant

Versus

1. **INSIGHT PRINT COMMUNICATIONS PVT. LTD.**
HAVING RESGISTERED OFFICE AT
A/14, SYNTHOFINE IND. ESTATE,
BEHIND VIRWANI IND. ESTATE,
DINDOSHI, OFF MREY RD.,
GOREGAON (E) MUMBAI- 400063
EMAIL:NIMISHTRACT@GMAIL.COM

.... Respondent No.1

2. **MR. DINESH GOPAL MUNDADA**
(IBBI/IPA-001/IP-P00286/2017-2018/10530)
INTERIM RESOLUTION PROFESSIONAL OF
CLOTHWARI PRINTING PVT. LTD.
403, FORTUNE HOUSE,
NEAR OCCASION LAWN,
BANER-PASHAN LINK ROAD,
BANER, PUNE-411 045
EMAIL:MUNDADA2007@GMAIL.COM

.... Respondent No.2

Present:

For Appellant : Mr. S.C. Mishra, Sr. Advocate with Mr. Shashank Pathak, Mr. Karan Grover and Mr. Lalit Kumar, Advocates.

For Respondent : Mr. Dhrubajit Saikia, Advocate for R-1.

J U D G M E N T
(Hybrid Mode)

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 04.04.2025 (hereinafter referred to as '**Impugned Order**') passed by the Adjudicating Authority (National Company Law Tribunal, New Delhi, Bench-VI) in Company Petition (IB) No. 422/ND/2023. By the impugned order, the Adjudicating Authority has admitted the Section 9 application filed by the Respondent No.1-Operational Creditor and admitted the Corporate Debtor into the rigours of Corporate Insolvency Resolution Proceedings (**"CIRP"** in short). Aggrieved by the impugned order, the present appeal has been preferred by the ex-director of the Corporate Debtor.

2. Coming to the brief facts of the case, the Appellant/Corporate Debtor-Clothwari Printing Pvt. Ltd. had placed an order for purchase of a digital textile printer from Italy on the Respondent No.1/Operational Creditor-Insight Print Communication Pvt. Ltd. This purchase order was placed on 21.11.2019 by the Corporate Debtor and on the same date, the Respondent No.1 raised an invoice amounting Rs 3,12,44,282/- and delivered the machine on 23.11.2019. In terms of the conditions of payment, the payment was required to be made after a 90 days trial period. Admittedly, no payment had been received by the Operational Creditor except for a payment of Rs 5 Lakh only on 28.09.2022 by the Corporate Debtor. However, while this payment was contested by the Corporate Debtor to have purportedly been made towards purchase of printer cartridge, the

Respondent No.1 claimed this amount to be part payment towards purchase of the printer machine. As no further payment was forthcoming from the Corporate Debtor, the Operational Creditor issued a Section 8 Demand Notice on 08.12.2022 for an amount of Rs 3.07 Cr. after adjusting the Rs. 5 Lakh payment. Disputing the operational debt, the Appellant-Corporate Debtor sent a Notice of Dispute on 10.02.2023 stating inter alia that the printer supplied was defective and under-performing and that the payment of Rs 5 Lakhs was deliberately misconstrued by the Operational Creditor to be payment towards the printer machine while it was for a separate purpose. The matter was considered by the Adjudicating Authority which passed the impugned order on 04.04.2025 upholding the Section 9 application on the ground that this was a case of established debt and default on the part of the Corporate Debtor and that the allegation of pre-existing dispute was not substantiated by the Corporate Debtor by placing on record sufficient evidence to that effect. Aggrieved by the impugned order, the Appellant has come up in appeal.

3. Shri S.C. Mishra, Ld. Sr. Counsel for Appellant making his submissions assailed the impugned order contending that there was no debt due on the part of the Corporate Debtor qua the Operational Creditor nor any default in the payment of the operational debt. It was further pointed out that the Section 9 application deserved to have been rejected because of presence of pre-existing disputes. Substantiating their contention, it was pointed out that the printer supplied to them by the Operational Creditor was a defective printer. This printer had earlier been supplied by them to another entity, namely, Bombay Rayon Fashion Ltd. (**"BRFL"** in short) which had rejected the same. The same defective printer was thereafter supplied to the Corporate Debtor. This becomes evident from the fact that though the MoU for supply of the printer had stipulated delivery after sixteen months from the date of payment of the advance money, the printer was supplied within two days from the date of issue of purchase order placed on the Operational Creditor. This shows that the printer was already available with the Appellant. It was also submitted that not only advance payment was not insisted upon by the Operational Creditor but they did not even make demand for the payment after delivery though the full amount was otherwise payable after a trial period of 90 days. This validated their contention that since the Operational Creditor had failed to submit proof of satisfactory trial, it was not in a position to demand any payment. Buttressing their argument further that the printer supplied was defective and not performing satisfactorily, it was submitted that this fact was clearly borne out by two e-mails sent by the Operational Creditor wherein they admitted to have deployed their engineers to set right the defective printing machine at their own cost.

4. It was also submitted that the Section 9 application filed by the Operational Creditor stood barred by limitation since the right to sue had arisen 90 days from the date of invoice which was 21.11.2019. The three years limitation period expired on 20.11.2022 while the Section 9 application was filed on 21.06.2023 which was clearly beyond the three years period. In any case, the alleged debt claimed by the Operational Creditor never became due as the 90 days trial period agreed between the parties in the MoU never completed since the printer was non-operational from the beginning. While admitting that a payment of Rs 5 Lakhs was made by them on 28.09.2022 to the Operational

Creditor, however, this payment cannot be seen to extend the limitation period as this payment was not a part-payment towards the printer machine. It was pointed out that this payment was made towards replacement of printer cartridge which was a distinct transaction from purchase of the printer machine. Thus, this payment has been misrepresented by the Operational Creditor as part-payment while in reality this payment was for an entirely separate and disconnected transaction which part-payment therefore could not be sufficient ground for extension of limitation. It was emphatically asserted that it defies logic that for a printer machine which had been invoiced for Rs 3.12 Cr. and delivered more than three years back, any Operational Creditor would have remained silent for such a long period without claiming outstanding payment and remained satisfied with a measly sum of Rs 5 Lakhs only. The Adjudicating Authority had therefore wrongly held that this part-payment on 28.09.2022 had been made against the debt owed to the Operational Creditor for supply of the printer. Therefore, this payment was erroneously held to be an acknowledgment of liability on the part of the Corporate Debtor basis which limitation period was wrongly deemed as having been extended by the Adjudicating Authority.

5. Submission was pressed that the Corporate Debtor was a financially solvent entity which had been discharging its debt obligations towards other financial creditors in a regular and timely manner. Under such circumstances, when the IBC has been enacted for the purpose of revival of the Corporate Debtor and not for creating an instrumentality for debt recovery, the Adjudicating Authority has grossly failed to appreciate the fact that the present proceedings initiated by the Operational Creditor being in the nature of debt recovery ought to have been rejected.

6. Rebutting the arguments of the Appellant, Shri Dhrubajit Saikia, Ld. Counsel representing Respondent No.1. submitted that the Adjudicating Authority had correctly noticed that the Corporate Debtor had defaulted in the payment of the principal amount of Rs 3.07 Cr. which was their outstanding liability towards the Appellant-Operational Creditor. It was strenuously contended that it is an undisputed fact that the printer machine had been supplied to the Corporate Debtor on 23.09.2019. The printer had been received by the Corporate Debtor without any demur or protest. At the time of receipt of the printer, no dispute was raised that the Operational Creditor had supplied the machine earlier than the time-period stipulated in the MoU. It was contended that this issue of early delivery as contrary to the terms of the MoU was a feeble defence which was raised as an afterthought by the Corporate Debtor. It was further submitted that the printer had also been commissioned and no disputes were raised on the performance of the printer. Further, it is misplaced on the part of the Corporate Debtor to argue that since the printer was not functional, the Appellant had not raised any demand for payment. This is belied by the fact that the Appellant had sent two e-mails on 25.03.2022 and 24.05.2022 in which the Appellant had clearly raised the request for payment. However, the Corporate Debtor has been selectively focusing on a few remarks contained in these e-mails to conjure a wrong impression that the e-mails were an admission that the printer machine was not working properly. On the contrary, the Corporate Debtor not having raised any objection or dispute with respect to delivery and commissioning of the printer from the time of issue of invoice and during the warranty period of twelve months, cannot be seen to raise this dispute now and project it as a pre-existing dispute. The Adjudicating Authority had therefore correctly concluded that the Corporate Debtor having failed to produce any correspondence or place any document on record or any supporting evidence to substantiate their claim regarding inefficacy of the printer supplied by the Respondent No.1 cannot make this as a ground of pre-existing dispute. It was emphasised that the ground of non-functionality of the printer not having been raised earlier cannot constitute a valid ground of pre-existing dispute.

7. Reliance was placed on the judgment of the Hon'ble Supreme Court in ***Mobilox Innovations Pvt. Ltd. Vs Kirusa Software Pvt. Ltd. in Civil Appeal No. 9405 of 2017*** to contend that the Adjudicating Authority had correctly applied this ratio to hold that since the claims of pre-existing dispute raised by the Corporate Debtor was unsubstantiated by supporting evidence, the Section 9 application cannot be thwarted by the Adjudicating Authority in the exercise of its jurisdiction in summary proceedings contemplated under the IBC.

8. Further adverting attention to the fact that the Corporate Debtor did not deny that they had made a payment of Rs 5 Lakhs to the Operational Creditor, it was contended that the Adjudicating Authority had correctly observed that the Corporate Debtor had failed to produce adequate evidence to show that the payment for printer cartridge was distinct from the payment meant to be made for the printer machine. Hence, this payment was rightly held to have been made towards discharging the outstanding liability towards the printer costs. The Adjudicating Authority had therefore correctly computed the extension of three years limitation period from the date of the part-payment made on 28.09.2022 to hold that the Section 9 application was not time-barred.

9. We have exhaustively heard both sides and the rival contentions advanced by the respective Ld. Counsels for both the parties and perused the records carefully.

10. The moot question to be answered by us is whether the Adjudicating Authority was right in holding that there was a plausible dispute which had been raised by the Corporate Debtor which required further investigation.

11. A sweeping glance at the statutory provisions of the IBC show that Section 8(2) gives liberty to a Corporate Debtor served with a Demand Notice under Section 8(1) by an Operational Creditor to bring to the notice of the Operational Creditor the existence of a dispute. In the present case, it is uncontested that the service of the Section 8 Demand Notice dated 08.12.2022 had been served by the Operational Creditor on the Corporate Debtor on 20.12.2022 and in response thereto, the Corporate Debtor had replied to the said Notice on 10.02.2023. The date of reply had spilled beyond the period of ten days period specified for the purpose of replying. Be that as it may, as long as the Notice of dispute has been raised, it needs to be taken cognisance of by the Adjudicating Authority, particularly so, when in the facts of the present case, the reply was sent by the Corporate Debtor well before the filing of the Section 9 application. It is a well settled proposition that for a pre-existing dispute to be a justifiable ground to thwart an application under Section 9, the dispute raised must be truly existing either at the time of filing a reply to notice of demand as contemplated by Section 8(2) or at the time of filing the Section 9 application.

The Adjudicating Authority was therefore required to look into the Notice of dispute to find out whether there was a real pre-existing dispute discernible from the facts stated therein.

12. It is an undisputed fact that the Corporate Debtor had filed a detailed reply to the Section 8 Demand Notice on 10.02.2023. At this juncture, we may take notice of the reply to the Section 8 demand notice, the relevant extracts of which are as placed below:

Date: 10.02.2023

"To,
M/s Insight Print Communications Pvt. Ltd

Sub: Reply to your Demand Notice dated 08.12.2022.
Sir/Madam,
….

1. At the outset, my client denies all the allegations made in the alleged Notice dated 08.12.2022 and also <u>deny any existence of any kind of operational debt due to be paid by us. All the allegations and submissions made by you in your alleged Demand Notice dated 08.12.2022 are false, fabricated, malicious and as such vehemently denied by my client</u>.

2. It is to inform you, that one Arioprint Digital Textile Printer was delivered by you to M/s Bombay Rayon Fashion Limited for which you i.e. M/s Insight Print Communications Pvt. Ltd and M/s Bombay Rayon Fashion Limited have executed a Memorandum of Understanding. My client further receives this information that the <u>said textile Printer was not working properly and efficiently at the premises of M/s Bombay Rayon Fashion Limited and was rejected</u>.

…

4. That <u>despite the repeated requests and reminders on telephone</u>, you did not pay heed and kept persuading my client to use the said printer machine<u>. You have also once sent your engineering team to my client premises which have advised to change the cartridges of the printer machine which was for a sum of Rs.5,00,000/-.</u> The said printer *cartridges were sent by you and a payment of Rs.5,00,000/- was paid to you by my client. It is to specifically inform you that a payment of Rs.5,00,000/- admitted by you in your Notice dated 08.12.2022 was actually a payment made for the printer cartridges as advised by your engineering team The said payment of Rs.5,00,000/- was not at all in furtherance of any alleged invoice.*

5. The printer machine was on approval and the said machine was transferred from another company at Bengaluru, as such it is a used machine which was sent on approval basis. You with an intention to play fraud on my client have portrayed the payment of Rs.5,00,000/- as the payment made for the printer machine. On the contrary, the printer machine is a second hand printer which was not in working condition and my client M/s Clothwari Printing Private Limited have requested you time and again to take back your printer from our premises as the same is not productive in nature."

(Emphasis supplied)

13. When we look at the above reply to the Section 8 demand notice, we notice that there is a categorical denial of outstanding operational debt by the Corporate Debtor besides raising several grounds to show that there was a pre-existing dispute between the parties with respect to the performance of the digital textile printer. Also, there is a clear dispute raised with regard to the purpose behind their payment of Rs 5 Lakhs to the Operational Creditor. The Corporate Debtor has explained in their reply notice that the amount of Rs 5 Lakhs was paid towards printer cartridge and was not a part-payment towards furthering payment against the invoice raised for the supply of the printer. It is therefore amply clear that the Notice of Dispute not only denied the existence of any debt as due and payable but also held the debt amount claimed to be disputed.

14. It is further the case of the Appellant that the Operational Creditor had supplied them a defective printer within two days of the placement of invoice though the MoU had provided for 16 weeks' time for delivery. Attention was also adverted to the MoU dated 11.07.2019 which was entered into between the Corporate Debtor and the Operational Creditor with regard to supply of the Textile Printer as placed at page 103 of Appeal Paper Book (**"APB"** in short). The MoU clearly provided that the Corporate Debtor was required to release 12.5% of the proforma invoice amount as advance alongwith a purchase order and pay the balance amount after satisfactory trials within a maximum of 90 days from the date of commissioning. The MoU also provided that the printer would be delivered 16 weeks after receipt of advance from the Corporate Debtor. However, the Operational Creditor delivered the printer without any advance payment. It was also submitted that there was a hidden reason why Operational Creditor did not demand any advance payment though the same was stipulated in the MoU. According to the Appellant, the Operational Creditor had already imported this printer earlier and had supplied the same to another entity, namely, BRFL. However, as the printer did not work properly at the BRFL factory, the same defective printer was then dumped on the Corporate Debtor which explains how and why the printer was supplied in such a short span of time and that too without any demand for advance payment being raised by the Operational Creditor. It was also contended that the Corporate Debtor was required to release balance payment after completion of trial operations of the printer for 90 days. Since the printer never worked properly, the Operational Creditor never raised any demand for payment even after delivery of the same. It was therefore asserted that there was no debt which was due or payable by the Corporate Debtor qua the Operational Creditor which fact the Adjudicating Authority had failed to appreciate leading to the erroneous impugned order.

15. Per contra, it is contended by the Operational Creditor that the Appellant not having raised any objection to the early delivery of the printer amounted to waiver and acquiescence on their part, and therefore, they cannot choose to raise this as a ground of dispute at this stage. Moreover, once the printer was delivered, the liability to pay on the part of the Corporate Debtor was triggered. Elucidating further it was submitted that two e-mails had been sent on 25.03.2022 and 24.05.2022 by them to the Corporate Debtor requesting for payment. It was also contended that on 28.09.2022, the Corporate Debtor had made a payment of Rs 5 Lakhs to them which amounted to be a clear admission of debt on their part.

16. Coming to our analysis and findings, we would like to mention that certain disputes have been raised by the Appellant in their Reply to the Section 8 Demand Notice. We now proceed to dwell further on the facts of the case to examine as to whether the disputes raised in the Reply to the Section 8 Demand Notice was real, discernible and pre-existing. At the outset, we however make it clear that we do not wish to get dragged into the history of how the printer came to be supplied first to BRFL and thereafter supplied to the Corporate Debtor. Keeping in view that BRFL is not a party in the present proceedings, we cannot rely on the submissions made by the Appellant on behalf of an extraneous third party, BRFL, that this printer which had been earlier supplied to BRFL, which not having functioned optimally in the BRFL premises, the Operational Creditor thereafter passed on the same defective printer machine to them.

17. We would like to now examine whether any payment was outstanding from the Appellant and what measures were taken by the Operational Creditor to seek payments from the Appellant. At this juncture, it would be relevant for us to peruse the two e-mails which had been sent on 25.03.2022 and 24.05.2022 by the Respondent No.1 to the Corporate Debtor requesting for payment of the printer. The two e-mails are as reproduced below:

E-mail of 25.03.2022

"From: N S Ahuwalia <ripi@insightwithin.com>
Date: 25 March 2022 at 12:51:20 PM IST
To: clothwariprinting@gmail.com

Subject: Regarding Arioli digital textile printer installed at your Tarapur works

Dear Nimishji,

This is to bring to your notice that we have installed an Arioli Digital textile printer, first at Your Bengaluru premises, then shifted to Tarapur Premises.

The printer is performing properly but till date we have not been paid for the same. This has been brought to the attention of Prashantji who has assured us of the payment being released by this month end.

Seeing the whole unit, with 5 world class digital textile printer, underperforming I extend our full support to help in bringing the unit to optimum level of production. Pl. feel free to call us for any help required.

Director Insight Print Communications Pvt. Ltd.

E-mail of 24.05.2022

From: N S Ahuwalia <ripi@insightwithin.com>
Date: 24 May 2022 at 6:25:26 PM IST

To: prashant@bombayrayon.com, clothwariprinting@gmail.com, cad babu<cadbabu@bombayrayon.com>, Gopi Save <gopi.save@insightwithin.com>
Subject: Pending Payment
Dear Prashantji,
The last call you took of mine was on the 29th. Of April.
<u>You promised to pay within 2 to 3 days</u>.
Today is the 24th. Of May no sign of any payment or communication.
I think this is really unfair on me.
If there is some communication it helps, otherwise it becomes very stressful.
<u>I don't know the reason for the payment not coming for the one & a half year.</u>
The printer is working fine.
We have proved to you that the quality of printing is better or as good as the other machines.
<u>We have given you the right solution for the gum padding.</u>
The machine was supplied on your terms & in an atmosphere of friendship.
<u>We supported the machine with our best engineer being there and a person for operating this machine on our payroll, for the last 3 years.</u>
I would never put in my own funds, except for a friend.
What more is required from me?
How can I survive if I do not get the payment even now."

(Emphasis supplied)

18. When we peruse the two e-mails dated 25.03.2022 and 24.05.2022, we notice that the Operational Creditor in both the e-mails have categorically stated that they did not receive any payment from the Corporate Debtor towards defraying the cost of the printer machine until the date of issue of the second e-mail. It is also clear from a reading of the two e-mails that no payment had been received by the Operational Creditor until 24.05.2022 though the printer was delivered to the Corporate Debtor way back in November 2019. We however do not find any material having been placed on record by the Operational Creditor to show that they had issued any notice or reminder for payment between the period of delivery of the printer in November 2019 until the e-mail of March 2022 when payment was sought.

19. When we look holistically into the conspectus of facts as to why no payments had been received by the Operational Creditor inspite of delivery of the printer, the two e-mails of 25.03.2022 and 24.05.2022 appear to be of special significance as they shed light on the developments in the intervening period between delivery of the printer and issue of the emails. We cannot lose sight of the fact that these e-mails make mention about the performance of the printer. A glance at the first e-mail of 25.03.2022 clearly shows that the Operational Creditor had assured to extend their full support to bring the printer supplied by them including 5 other world class digital textile printer in the unit of the Corporate Debtor to an optimum level of production. Since we are concerned with the printer supplied by the Operational Creditor, it is a clear admission on the part of the Operational Creditor that while they had not received payment, there appears to be an element of nexus between the performance of the printer and the payment not having been made. The use of the phrase "underperforming" printer bares it all. Even the second e-mail of 24.5.2022 which highlights the need for payment also mentions that the printer needed certain solutions to aid its performance and that a suggested solution of gum padding had been made. This shows that the performance of the printer needed some amount of constant monitoring to ensure its smooth performance. Further, there is a mention of the Operational Creditor having themselves purportedly deployed on their own costs their best engineer alongwith another person for operating the printer. When the MoU did not provide for any such obligation for deployment of any engineer/personnel and yet the same was done by the Operational Creditor does allude that there were issues relating to proper performance of the printer. Both these e-mails therefore manifest clear evidence of pre-existing dispute between the two parties with regard to the performance standards of the printer. We have no hesitation in observing that this constituted sufficient foundation that genuine pre-existing disputes existed between the parties.

20. Given this backdrop of sustained non-payment by the Corporate Debtor and the two e-mails sent by the Operational Creditor seeking payment for the first time after a lapse of three years while also concurrently assuring to provide assistance to ensure optimal performance of the printer indicates that there were some protracted differences between the two parties on the printer supplied. With both the emails being on record which points out a sub-stratum of persisting dispute between the two parties, for the Adjudicating Authority to hold that the pre-existing dispute was unsubstantiated, does not appeal to our reasoning. This dissatisfaction has been amplified in the Notice of Dispute raised by the Corporate Debtor in response to the Section 8 Demand Notice. These disputes though amply borne out in the two e-mails and the Reply Notice of Dispute, seem to have been superfluously glossed over by the Adjudicating Authority.

21. We now come to the contention of the Respondent No.1 that part payment of Rs. 5 Lakhs having been made, it amounts to acknowledgement of debt and default in payment. However, when we look at the Reply to the Demand Notice, we find that the same clearly mentions the reasons for making the payment of Rs. 5 Lakhs. It states that it was the engineering team of the Operational Creditor which had advised the change of printer cartridge to make the printer properly functional. It was stated that the Operational Creditor had requested the Appellant to incur this separate expenditure of Rs. 5 Lakh on the printer cartridge to help them rectify the faulty operation of the printer machine with the assurance that this sum would be returned to them at a later stage by the Operational Creditor. The said cartridge had been sent to the Corporate Debtor by the Operational Creditor much after the supply of the printer. Hence it is not unreasonable on the part of the Corporate Debtor to contend that the payment of Rs 5 Lakhs was on account of the cartridge and not for the printer. Further when only a payment of a miniscule amount of Rs 5 Lakhs was made as against an outstanding amount of Rs. 3.07 Cr for last three years, we are persuaded to believe that this payment was only for cartridge replacement, which cartridge was supplied separately much after the supply of the printer. The dispute raised by the Corporate Debtor that payment of the printer machine and printer cartridges were two distinct and disconnected transactions and hence payment of Rs. 5 Lakhs cannot be construed as part-payment for the printer does not appear to be specious. The Adjudicating Authority is only required to look into the Reply to the Section 8 Demand Notice to find out whether a pre-existing dispute was decipherable from the reply. As long as a dispute over a claim of payment is apparent from the Reply notice, as is contemplated by Section 8(2) of the IBC, that by itself is sufficient enough to thwart an application under Section 9.

22. As long as the defence raised by the Corporate Debtor is not a moonshine dispute, it is not the remit of IBC to investigate such disputes. No Section 9 application can be raised for disputes whose adjudication would entail leading of evidence. Any such exercise would fall beyond the scope, remit and summary jurisdiction of the Adjudicating Authority under the statutory framework of IBC. The Hon'ble Supreme Court in its judgment in ***Mobilox Innovations Pvt. Ltd. Vs Kirusa Software Pvt. Ltd. (2018) 1 SCC 353*** has held that it is enough that a dispute exists. The Adjudicating Authority has to only look into the factual matrix as to whether there is a plausibility of dispute and that the defence of pre-existing dispute raised by the Corporate Debtor is not a feeble defence or unsupported by evidence without entering into adjudication of the dispute. The relevant extracts of the above judgment are as reproduced below:

> *"33...........What is important is that the existence of the dispute and/or the suit or arbitration proceeding must be pre-existing i.e. it must exist before the receipt of the demand notice or invoice, as the case maybe. In case the unpaid operational debt has been repaid, the corporate debtor shall within a period of the self-same 10 days sent and attested copy of the record of the electronic transfer of the unpaid amount from the bank account of the corporate debtor or send an attested copy of the record that an operational creditor has encashed a cheque or otherwise received payment from the corporate debt [Section 8(2) (b)]. It is only if, after the expiry of the period of the said 10 days, the operational creditor does not either receive payment from the corporate debtor or notice of dispute, that the operational creditor may trigger the insolvency process by filing an application before the adjudicating authority under Sections 9(1) and 9(2)........."*
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> ******* ****** ******
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> *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."

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"56. Going by the aforesaid test of "existence of a dispute", it is clear that without going into the merits of the dispute, the appellant has raised a plausible contention requiring further investigation which is not a patently feeble legal argument or an assertion of facts unsupported by evidence. The defense is not spurious, mere bluster, plainly frivolous or vexatious. A dispute does truly exist in fact between the parties, which may or may not ultimately succeed, and the Appellate Tribunal was wholly incorrect in characterizing the defense as vague, got-up and motivated to evade liability."

23. In view of the facts and circumstances of the case when tested against the judicial precedent as laid down in ***Mobilox judgment supra,*** we are of the considered view that the Adjudicating Authority has incorrectly allowed the Section 9 application filed by the Operational Creditor inspite of a plausible dispute pointed out by the Corporate Debtor in their Reply Notice of dispute. To our minds, the Adjudicating Authority has committed a patent error in not appreciating the facts of the case in the correct perspective. The impugned order, therefore, cannot be sustained.

24. Accordingly, the impugned order is set aside and the Corporate Debtor is forthwith released from the rigours of CIRP. It however goes without saying that we have not expressed any views on the merits of the dispute. Setting aside of the impugned order will however not come in the path of the Operational Creditor to seek alternative remedies before an appropriate forum in accordance with law. The Appeal is allowed. No costs.

[Justice Ashok Bhushan]
Chairperson

[Barun Mitra]
Member (Technical)

Place: New Delhi

Date: 15.10.2025

Abdul/ Harleen