

IN THE NATIONAL COMPANY LAW TRIBUNAL
JAIPUR BENCH

**CORAM: SHRI DEEP CHANDRA JOSHI,
HON'BLE JUDICIAL MEMBER**

**SHRI RAJEEV MEHROTRA,
HON'BLE TECHNICAL MEMBER**

IA No. 518/JPR/2023 &
CP No. (IB)- 90/9/JPR/2022

(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 K V INTERIORS & DESIGNERS

...Operational Creditor/Applicant

Versus

M/S HERITAGE MOTELS PRIVATE LIMITED

...Corporate Debtor/Respondent

MEMO OF PARTIES

CP No. (IB)- 90/9/JPR/2022:

M/S KV INTERIORS & DESIGNERS

Lakshman Singh Block, Near
Triton Mall, Jhotwara, Jaipur-
302012

...Applicant

VERSUS

M/S HERITAGE MOTELS PRIVATE LIMITED

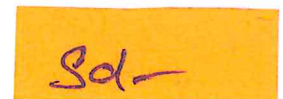
CIN: U55101RJ2006PTC035358

R/o Office-F-124, MIA, Malviya
Nagar, Jaipur-302001

...Respondent

AND





IA (IBC) NO. 518/JPR/2023:**M/S HERITAGE MOTELS PRIVATE LIMITED****CIN: U55101RJ2006PTC035358**R/o Office-F-124, MIA, Malviya Nagar,
Jaipur-302001**...Applicant****VERSUS****M/S KV INTERIORS & DESIGNERS**Lakshman Singh Block, Near Triton Mall,
Jhotwara, Jaipur-302012**...Respondent****FOR THE APPLICANT(S)** : Varnali Purohit, Adv.**FOR THE RESPONDENT(S)** : Atharv Mundra, Adv.**Order Pronounced On: 22.12.2023****ORDER****Per: Shri Rajeev Mehrotra, Technical Member**

1. The present application has been filed by *M/s KV Interiors & Designers* through its authorised signatory *Mr. Karan Singh* ('Operational Creditor'/ 'Applicant'), seeking to initiate Corporate Insolvency Resolution Process ('CIRP') against *M/s Heritage Motels Private Limited* ('Corporate Debtor'/ 'Respondent') under Section 9 of the Insolvency and Bankruptcy Code, 2016 ('IBC' / 'Code') read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 ('Rules').
2. The Applicant, *M/s KV Interiors & Designers*, is a well-known Interior Designing Consultancy & Manufacturing firm, registered under the Partnership Act, 1932 which was incorporated in the year 2017. The

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registered place of business is at Lakshman Singh Block, Near Triton Mall, Jhotwara, Jaipur, Rajasthan-302012. The alleged default by the Corporate Debtor for the non-payment of operational dues amounts to Rs. 1,36,62,992/- (Rupees One Crore Thirty-Six Lakh Sixty-Two Thousand Nine Hundred Ninety-Two Only) along with interest of Rs. 10,99,390.354/- (Rupees Ten Lakh Ninety-Nine Thousand Three Hundred Ninety-One Only)

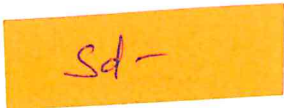
3. The Corporate Debtor, *M/s Heritage Motels Private Limited*, is a private company incorporated under the Companies Act, 1956, on 17.03.2006, having CIN: U55101RJ2006PTC035358. The Respondent has its registered office at – Office F-124, MIA, Malviya Nagar, Jaipur-302017; and has an Authorised Share Capital of Rs. 1,50,000/- (Rupees One Lakh Fifty Thousand Only) and Paid-Up Share Capital of Rs. 1,50,000/- (Rupees One Lakh Fifty Thousand Only).
4. The details of the transactions leading to the filing of this application averred by the Applicant *vide* Diary No. 3704/2022 dated 08.12.2022 are as follows:
 - 4.1 The Corporate Debtor expressed interest in engaging the Operational Creditor for providing and fixing furniture, POP ceiling, POP punning, wall & floor tiles installation, paint and metal doors in the rooms in Hyatt Place, Jaipur. The Applicant has carried out the agreed

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assignment on the concerned property as per requirements of the Corporate Debtor.

- 4.2 Thereafter commissioning of the said work the Applicant has raised several invoices of the work done and the Corporate Debtor has acknowledged the same. Copy of the work/purchase orders are annexed as Annexure-4 of the Petition.
- 4.3 The Applicant has diligently administered and executed the assigned work and sent several reminders for the payments of the due amount against the Corporate Debtor. Subsequently the Applicant sent a Demand Notice dated 18.10.2022 for the payment of money alongside interest for Rs. 1,40,19,244.354/- (Rupees One Crore Forty Lakh Nineteen Thousand Two Hundred Forty-Five Only) towards the unpaid operational debt. The Corporate Debtor has replied to the said Demand Notice dated 27.10.2022 wherein the Corporate Debtor has raised serious concern about the inferior and substandard quality of the work performed by the Applicant. Copy of the Demand Notice dated 18.10.2022 and reply to the said demand notice dated 27.10.2022 are annexed as Annexure-10 and 11 respectively of the Petition.
- 4.4 The aforementioned details, as reflected in Part IV of the Petition, are as follows:

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Part IV**Particulars of Operational Debt**

1.	Total Amount of Debt, Details of Transactions on account of which debt fell due, and the Date from which such debt fell due.	Total Amount of Debt: Total Service/ goods provided of Rs. 1,36,62,992/- (Rupees One Crore Thirty-Six Lakh Sixty-Two Thousand Nine Hundred Ninety-Two Only) including GST. Amount claimed to be default-Rs. 1,29,19,854/- (Rupees One Crore Twenty-Nine Lakh Nineteen Thousand Eight Hundred Fifty-Four Only) Plus, Interest payable @18% per annum on Rs. 10,99,390.354/- (Rupees Ten Lakh Ninety-Nine Thousand Three Hundred Ninety-One Only) totalling to Rs. 1,40,19,244.354/- (Rupees One Crore Forty Lakh Nineteen Thousand Two Hundred Forty-Five Only)
2.	Amount claimed to be in default and the date on which the default occurred	Amount Claimed to be in default: Rs. 1,36,62,992/- (Rupees One Crore Thirty-Six Lakh Sixty-Two Thousand Nine Hundred Ninety-Two Only) Date from which Debt fell Due: 10.05.2022 The last payment of Rs. 15,00,000/- was made on 02.03.2021

5. Consequent to the notice issued by this Adjudicating Authority, the Respondent filed its reply *vide* Dairy No. 1396/2023 dated 31.05.2023, stating as follows:

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5.1 The Corporate Debtor has awarded the tender of interior designing which includes furniture and paintwork. After commissioning the said the Applicant have issued various work order/invoices. It is pertinent to note that time was essence of the work contract therefore in the view of the same the Applicant was required to execute the said work within prescribed time period. The prescribed timelines for various work and purchase orders are as follows:

<i>Sr. No.</i>	<i>WO/PO No.</i>	<i>PB Page No.</i>	<i>Date of PO</i>	<i>Time Limit</i>	<i>PO Amount (in Rs.)</i>
1	9	40-47	03.10.2018	3-4 Months	2,89,40,559
2	5	48-50	03.10.2018	3-4 Months	64,98,198
3	26	51-64	08.01.2020	6-8 Weeks	1,10,00,000
4	32	65-67	08.01.2020	3-4 Weeks	2,65,000
5	46	68-72	14.02.2019	30 days	7,20,136

5.2 The Applicant has not adhered to timelines as stipulated above. Moreover, there were lots of deviations and shortcomings in the work performed by the Applicant as confirmed by an Engineer's report by the Hyatt Group. Copy of the Engineer Report is annexed as Annexure 1 and 3 of the Reply respectively.

5.3 The Respondent further submitted that there is an existence of dispute between the parties prior to the issuance of the Demand Notice. The Respondent states that from the E-mail communication it is established that there is an existence of dispute between the parties.

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Further it is observed the present Petition is not filed in accordance with the prescribed form and format.

5.4 It is further stated that it is fit case to invoke the provisions of the Section 65 of the IBC, 2016 since it is filed with the malicious intent.

The Applicant deliberately suppressed the significant E-mail communication and created bogus bills in April and May 2022.

5.5 It is pertinent to note that all the incomplete work which was left in between by the Applicant was completed by third party hired by the Corporate Debtor.

5.6 The Corporate Debtor has time and again raised disputes in relation to the work performed by the Applicant through E-mails. Wherein the Respondent has mentioned that the work which was performed by the Applicant is of very inferior and sub-standard quality. There are lots of technical and quality related issues in the work. Further it is mentioned that the Applicant has never adhered to the agreed timelines in performing the work. The series of E-mails showing that there is a pre-existing dispute are given as follows:

S. NO.	EMAIL AND PAGE NOS. OF PAPER BOOK FILED ALONG WITH REPLY	CONTENT
1.	September 17, 2022 @Pg. 5	The Respondent raised concerns about the agreed timelines of the work and quality of the work

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2.	September 20, 2022@Pg. 6	Multiple issues raised regarding quality of work performed by the Applicant
3.	September 24, 2022 @Pg. 7	The Applicant has seriously contested the contention of the Respondent and stated that entire work has been done.
4.	October 9, 2022 @Pg. 8	The Respondent has made detailed response to the E-mail of the Applicant and sought for an unconditional apology letter, withdrawal of the wrongful claim of the Applicant, legal expenses.

Copy of the aforesaid E-mails are annexed as Annexure-2 of the Reply.

5.7 Additionally, the Respondent has relied on the following Judgements:

- I. *Mobilox Innovations Private Limited Vs Kirusa Software Private Limited in CA No. 9405-2017*
- II. *K. Kishan Vs Vijay Nirman Company Pvt. Ltd. Civil Appeal Nos. 21824 & 21825-2017*
- III. *Design Work Infrastructure India Pvt. Ltd. Vs Premier Restaurants Pvt. Ltd. in Company Appeal (AT) (Insolvency) No. 73 of 2017*
- IV. *DBM Geotechnics and Constructions Private Ltd. Vs Gopalpur Ports Limited in CP (IB) No. 250/KB/2017*
- V. *Explo Media Pvt. Limited Vs Ambience Pvt. Ltd. (03.11.2017-NCLT-New Delhi): MANU/NC/1388/2017 in CP No. IB-220/ND/2017*

*VI. Ingram Micro India Private Limited Vs Noida Software
Technology Park Limited: MANU/NC/0411/2017*

6. The Applicant has filed its rejoinder vide Dairy No. 1625/2023 dated 03.07.2023 and has submitted that:
- 6.1 The Applicant has stated that the Respondent is a defaulter on the regular basis. The Respondent has also defaulted in fulfilling its obligation to pay to the salaries of its own employees. Copy of the E-mail reminders are annexed as Annexure-A/1(Colly) of the Rejoinder.
- 6.2 The Respondent unjustifiably claimed that the services provided by the Applicant were of sub-standard quality. Furthermore, prior to the demand made by the Applicant, the Corporate Debtor never raised any dispute regarding the quality of the work.
- 6.3 It is pertinent to note that the Respondent has raised fresh work/purchase order which indicates that the Applicant has performed the work in very professional manner and has completed the work in a given time frame. The entire work has been completed by the Applicant on time which can be substantiated from the snagging and de-snagging list issued by the Engineer and Project Manager of the Respondent wherein it was categorically stated that all the pending works have been completed by the Applicant.


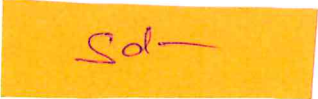


7. The Respondent has further filed an Interlocutory Application ('IA') (IBC) No.518/JPR/2023 vide Dairy No. 2240/2023 dated 13.09.2023 under Section 195 and 340 of the Code of Criminal Procedure, 1973 states the following:

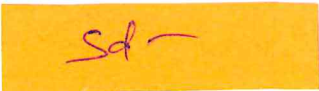
7.1 It is stated that no court can take cognizance of offence punishable under Section 195(1)(b)(i) except on complaint in writing by the Court concerned. The Respondent also relied on *Narendra Kumar Srivastava Vs. State of Bihar (2019) 3 SCC 318 (PB 1 to 19)* and *Chajoo Ram Vs Radhey Shyam (1971) 1 SCC 774: 1971 SCC (Cri) 33*.

7.2 The Applicant has raised bogus bills and the Corporate Debtor reserves its rights to take appropriate legal action by filing the Application under Section 195 and 340 of the Code of Criminal Procedure. Moreover, the Applicant has gotten all the snagging list fraudulently and got it approved by one Mr. Kaushal and Mr. Mahendra who are not even authorised.

7.3 The Operational Creditor has filed the present Petition on the basis of false claim and fabricated documents therefore the prosecution for perjury shall be sanctioned since false and fabricated evidences filed along with the Petition.

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- 7.4 The Respondent stated that the Petition filed by the Applicant is not maintainable as the Demand Notice which is served by the Applicant has no date of default and does not have any legal sanctity in the eyes of law.
- 7.5 Further, the Corporate Debtor submitted that the Petition does not meet the minimum threshold limit as prescribed under the IBC for initiation of CIRP and therefore, is liable to be dismissed. It was further stated that as per the notification dated 24.03.2020, the minimum threshold limit under Section 4 of IBC has been fixed as Rs. 1,00,00,000/- (Rupees One Crore) for initiation of CIRP.
- 7.6 The Corporate Debtor submits that the Demand Notice was not duly served as per Section 8 of the IBC, 2016 and the date of the default is not specifically mentioned in the Demand Notice.
8. The Operational Creditor has filed reply to the said IA vide Dairy No. 2454/2023 dated 10.10.2023 stating the following:
- 8.1 The said IA is filed by the Corporate Debtor at a very latter stage with the intention to delay the proceedings. The Corporate Debtor has maliciously raised contentions under Section 195 of the CrPC. The Court granting sanction must be satisfied that there is a prima facie case of deliberate falsehood and matter of substance. Mere surmises and presumption or allegation cannot be basis for charge of perjury.




- 8.2 Further it is submitted that the Operational Creditor is a MSME Unit and non-payment of long outstanding dues is adversely affecting the working/operational capital of the Operational Creditor. The Applicant has performed all the work within stipulated timelines. During all this period of work no complaints were ever made about sub-standard work.
- 8.3 It is further stated that the Corporate Debtor is merely accusing the Applicant of creating bogus bills without any concrete documentation, witnesses or other forms of proof to establish the existence of these alleged bogus bills does not hold any substance.
9. The Applicant has filed written submissions vide Dairy No. 2468/2023 dated 11.10.2023 and whereby they have reiterated the same as mentioned in their earlier submission.
10. The Respondent also filed written submissions vide Dairy No. 2491/2023 dated 13.10.2023 and whereby they have reiterated the same as mentioned in their earlier submission and additionally relied on the following Judgements:
- I. *Ayan Tech Solutions Pvt. Ltd. Vs Rasi Seeds (P) Ltd., NCLT Chennai in IBA/316/2020*
 - II. *Amarsang Nathaji Vs Hardik Harshadbhai Patel and Ors. in Civil Appeal No. 11120 of 2016 in S.L.P. (C) No. 13749 of 2016*

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11. We have heard the Ld. Counsels for the parties and perused the averments made in the Application, Reply, Rejoinder, Written Submission and all the documents enclosed with the Application.
12. This Adjudicating Authority having perused all the relevant papers and finding them in the order notes that the Registered Office of the Respondent is situated in the state of Rajasthan, and therefore Adjudicating Authority has jurisdiction to entertain and try this Application. Further, this matter is within the purview of Laws of Limitation, as the debt fell due on 10.05.2022 and the Application has been filed before this Adjudicating Authority on 08.12.2022, hence the period of three years after the default occurred not been exhausted at the time of filing of this Application. Therefore, the present Application has been filed within the prescribed period of limitation.
13. Before we come to the facts of the present case, the statutory scheme with regard to the Application under Section 9 needs to be recapitulated. Section 8 of the Code requires the Operational Creditor on the occurrence of default to deliver a Demand Notice on unpaid Operational Debt. Section 8(2) provides that Corporate Debtor within a period of 10 days of the receipt of the Demand Notice bring to the notice of the Operational Creditor existence of dispute if any. Section 8 of the Code is as follows:

“Section 8: Insolvency resolution by operational creditor. - (1) An operational creditor may, on the occurrence of a default, deliver a



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demand notice of unpaid operational debt or copy of an invoice demanding payment of the amount involved in the default to the corporate debtor in such form and manner as may be prescribed.

(2) The corporate debtor shall, within a period of ten days of the receipt of the demand notice or copy of the invoice mentioned in sub-section (1) bring to the notice of the operational creditor—

(a) existence of a dispute, [if any, or] record of the pendency of the suit or arbitration proceedings filed before the receipt of such notice or invoice in relation to such dispute;

(b) the [payment] of unpaid operational debt—

(i) by sending an attested copy of the record of electronic transfer of the unpaid amount from the bank account of the corporate debtor; or

(ii) by sending an attested copy of record that the operational creditor has encashed a cheque issued by the corporate debtor.

Explanation. —For the purposes of this section, a “demand notice” means a notice served by an operational creditor to the corporate debtor demanding 2[payment] of the operational debt in respect of which the default has occurred.”

14. Under Section 9(1), Operational Creditor if does not receive payment from the Corporate Debtor or notice of the dispute under Sub-section (2) of Section 8, may file an Application under Section 9(1) of the Code.

Section 9(1) is as follows:

“Section 9: Application for initiation of corporate insolvency resolution process by operational creditor.- (1) After the expiry of the period of ten days from the date of delivery of the notice or invoice demanding payment under sub-section (1) of section 8, if the

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operational creditor does not receive payment from the corporate debtor or notice of the dispute under sub-section (2) of section 8, the operational creditor may file an application before the Adjudicating Authority for initiating a corporate insolvency resolution process.”

Section 9(5)(ii) is as follows:

“(5) The Adjudicating Authority shall, within fourteen days of the receipt of the application under subsection (2), by an order—

(i).....

(ii) reject the application and communicate such decision to the operational creditor and the corporate debtor, if—

(a) the application made under sub-section (2) is incomplete;

(b) there has been [payment] of the unpaid operational debt;

(c) the creditor has not delivered the invoice or notice for payment to the corporate debtor;

(d) notice of dispute has been received by the operational creditor or there is a record of dispute in the information utility; or

(e) any disciplinary proceeding is pending against any proposed resolution professional:

Provided that Adjudicating Authority, shall before rejecting an application under sub-clause (a) of clause (ii) give a notice to the applicant to rectify the defect in his application within seven days(i) of the date of receipt of such notice from the adjudicating Authority.”

15. We have a number of judgments showing light on the aspect of pre-existing dispute under Section 9 of the Code. Conjoint reading of Section 8 and Section 9 of the Code shows that an Operational Creditor can trigger the CIRP when there is an undisputed debt and a default in payment thereof. In the present case the Corporate Debtor had raised dispute with respect to the quality of the work performed by the Applicant *vide* e-mails dated 17.09.2022 and 20.09.2022. Copy of the E-mail dated 17.09.2022 and 20.09.2022 are attached as Annexure-1 of the Reply.

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16. Further it is an admitted fact that the Applicant has performed the work at the hotel of the Corporate Debtor. The Applicant has also issued work completion certificate/snagging list dated 14.05.2022 wherein it is mentioned that the assigned work has been completed successfully as per the work and purchase orders. Subsequently the Corporate Debtor have written series of E-mails to the Applicant regrading the pending issues in the work performed by the Applicant. The said e-mails exchanged between the parties, prior to the Demand Notice dated 18.10.2022 indicate that there was pre-existing dispute between the parties regarding the claim made by the Operational Creditor. The e-mail dated 17.09.2022 sent by the Corporate Debtor to the Operational Creditor clearly mentioned that the work performed by the Applicant is of very inferior and sub-standard quality. There are lots of technical and quality issues pertaining to the work. The E-mail dated 17.09.2019 is attached as Annexure-1 of the Reply is reproduced below for ease of reference:

-----From: Rajendra Mundra sunnyraaj.m@gmail.com -----

Date: Sat, Sep 17, 2022 at 7:08 PM

Subject: Reminder: Regarding Pending Issues.

To: Kvinteror@Gmail.com kvinteror@gmail.com

Dear Sir

We regret to inform you that despite several reminders and red flags raised by us in relation to the quality of work undertaken by you at our hotel. Till date no concrete action has been taken by you or your workforce to rectify the same. The work done by you is of very inferior and sub- standard quality. There are lots of technical and

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quality issues pertaining to the work done by you which has created a lot of trouble for us and is not good for the reputation of our hotel. You have never adhered to agreed timelines and quality, because of which our hotel is being made to suffer and mocked. Moreover, the work done by you is in clear departure from the agreed specifications. Please appreciate that the retention money was paid to you solely relying upon your assurance and promise that you shall submit all test certificates, warranty cards, operative manuals and other relevant documents, but the same have not been provided by you till date in spite of repeated reminders and follow-ups and you have been dodging us. Further, you had also assured us that you would settle the amount which you are obligated to pay to us towards liquidated damages and other damages, however you have not paid any amount toward the same.

Therefore, you are hereby called upon to pay us the liquidated and other damages which as per our estimate is around Rs. 1 crore and other relevant documents within a period of fifteen days.

With regards

For Heritage Motels Pvt. Ltd. (Sic.)

17. In the above reference, we need to notice the judgment of the Hon'ble Supreme Court in the context of pre-existing dispute. The classic case on the subject is the judgment of the Hon'ble Supreme Court in "*Mobilox Innovations Private Limited vs. Kirusa Software Private Limited- (2018) 1 SCC 353*". The Hon'ble Supreme Court in the above case had occasion to interpret Section 8 and Section 9 of the IBC. It was laid down that the dispute must exist before the receipt of the Demand Notice or invoice. The Hon'ble Supreme Court in the above case has noticed various judgments and enunciated the law, in para 51 of the judgment as follows: -

"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.”

18. Further in the judgment of the Hon’ble Supreme Court in “*Kay Bouvet Engineering Ltd. vs. Overseas Infrastructure Alliance (India) Pvt. Ltd.- (2021) 10 SCC 483*”. The Hon’ble Supreme Court again reiterated and explained the principle laid down in *Mobilox (supra)*. In para 21 again the law was reiterated in following words: -



“It is thus clear that once the “Operational Creditor” has filed an application which is otherwise complete, the adjudicating authority has to reject the application under Section 9(5)(ii)(d) of IBC, if a notice has been received by “Operational Creditor” or if there is a record of dispute in the information utility. What is required is that the notice by the “Corporate Debtor” must bring to the notice of “Operational Creditor” the existence of a dispute or the fact that a suit or arbitration proceedings relating to a dispute is pending between the parties. All that the adjudicating authority is required 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

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defence which is a mere bluster. It has been held that however, at this stage, the Court is not required to be satisfied as to whether the defence is likely to succeed or not. The Court also cannot go into the merits of the dispute except to the extent indicated hereinabove. It has been held that so long as a dispute truly exists in fact and is not spurious, hypothetical or illusory, the adjudicating authority has no other option but to reject the application.”

19. We have closely gone through the facts of the case. As per Section 8(2)(a) of the Code, ‘*existence of a dispute, if any, or record of the pendency of the suit or arbitration proceedings filed before the receipt of such notice or invoices in relation to such dispute*’ can interdict Section 9 proceedings under the Code. The Hon’ble Supreme Court in ‘*Rajratan Babulal Agarwal v. Solartex India Pvt. Ltd. & Ors., Civil Appeal No. 2199 of 2021*’ held that ‘*60. ... that the court need not be satisfied that the defense is likely to succeed. The standard, in other words, with reference to which a case of a pre-existing dispute under the IBC must be employed cannot be equated with even the principle of preponderance of probability which guides a civil court at the stage of finally decreeing a suit.*’
20. The correspondence between the parties herein clearly shows that a dispute had already[^]risen between the parties regarding alleged inferior and sub-standard quality the work performed by the Applicant. The exchange of e-mails between the parties is enough to show that there was pre-existing dispute with respect to the goods supplied by the Applicant. Further, in view of the order of the Hon’ble Supreme Court in *Mobilox Innovations*

Private Limited vs. Kirusa Software Private Limited (supra) we are not inclined to commence CIRP of the Corporate Debtor.]

21. In view of the foregoing, inter-alia pre-existing disputes between the parties, we have no option but to reject the prayer of the Operational Creditor to initiate proceedings under Section 9 of IBC.
22. Hence, the Application is Dismissed. The Order in the present matter is made in terms of Section 9 (5) (ii) of IBC, 2016, and based on the facts and pleadings submitted by the parties in the instant case and shall not prejudice any matter or proceedings between the parties, if any, before any other Court, Tribunal or any judicial or other authority.
23. Accordingly, CP No. (IB)90/9/JPR/2022 is dismissed.] ✓

IA No. 518/JPR/2023

24. The Corporate Debtor has filed this IA under Sections 195 and 340 of the Code of Criminal Procedure, 1973, wherein it was prayed that an appropriate inquiry against the acts of the Operational Creditor along with two miscreants *Mr. Kaushal* and *Mr. Mahendra*, be conducted on account of the allegation that the Operational Creditor has perjured documents. The Counsel for the Operational Creditor has denied the allegations and submitted that this is a tactics applied to derail the proceedings of Section 9 of the Code preferred by the Operational Creditor against the Corporate Debtor.

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25. We have heard the counsels for the parties to the case, while delving into the facts of the matter presented, we find no merit in the Application preferred by the Corporate Debtor alleging acts of perjury against the Operational Creditor.
26. In light of the foregoing, this Interim Application is dismissed and is disposed of accordingly.



**DEEP CHANDRA JOSHI,
JUDICIAL MEMBER**



**RAJEEV MEHROTRA,
TECHNICAL MEMBER**