IN THE NATIONAL COMPANY LAW TRIBUNAL

DIVISION BENCH, COURT NO. I

KOLKATA

Interlocutory Application (IB) No. 2273/KB/2024

In

Company Petition (IB) No. 263/KB/2024

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

IN THE MATTER OF:

Pecon Software Limited

... Operational Creditor/ Applicant

Versus

Kommoners Club & Hospitality Private Limited

... Corporate Debtor/ Respondent

Interlocutory Application (IB) No. 2273/KB/2024

An Application under Section 60(5) of the Insolvency and Bankruptcy Code, 2016, read with Rule 11 of the National Company Law Tribunal Rules, 2016

AND IN THE MATTER OF:

Kommoners Club & Hospitality Private Limited

IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH, COURT NO. I
KOLKATA

Interlocutory Application (IB) No. 2273/KB/2024
In
Company Petition (IB) No. 263/KB/2024

..... Applicant

Versus

Pecon Software Limited

..... Respondent

Date of Pronouncement:27.08.2026

Coram:

SMT. BIDISHA BANERJEE, MEMBER (JUDICIAL)

MS. REKHA KANTILAL SHAH, MEMBER (TECHNICAL)

Appearance:

Mr. Ratnanko Banerji, Sr. Adv.	]	For the Operational Creditor
Mr. Jayanta Sengupta, Adv.	]	
Ms. Kishan Goenka, Adv.	]	
Mr. Prateek Dutta, Adv.	]	
Mr. S. K. Kanodia, Adv.	]	
Mr. Shaunak Mitra, Adv.	]	For the Corporate Debtor
Mr. Dripto Majumdar, Adv.	]	

ORDER

PER BIDISHA BANERJEE, MEMBER (JUDICIAL):

1. This Court congregated through a hybrid mode.

2. Heard the Learned Counsels for both parties.

Company Petition (IB) No. 263/KB/2024

3. **Factual Matrix:**

i. This instant application is preferred under Section 9 of the Insolvency and Bankruptcy Code, 2016, for brevity "IBC" by Pecon Software Limited, hereinafter referred to as the "Applicant"/ "Operational Creditor" or "OC" against Kommoners Club & Hospitality Private Limited, hereinafter referred to as "Respondent" / "Corporate Debtor" or "CD" seeking initiation of Corporate Insolvency Resolution Process, (for brevity "CIRP") in respect of the Corporate Debtor.

4. Submissions of the Applicant:

i. It is submitted that the CD approached the OC for an accommodation/space on the first floor of the building owned by the OC for its business activity and the CD proposed to run a club-cum-restaurant-cum-bar along with two parking spaces in the said building, and for that a formal agreement was executed between the parties by way of an Indenture of Lease dated 22.05.2018, for a period of 3 years from 16th June, 2018 to 16th June, 2021, on the mutually agreed terms and conditions.(Annexure 4 at page 32 of the Petition).

ii. The monthly rate was agreed by the CD to be at the rate of Rs. 40/- per sq. ft. per month aggregating to a sum of Rs. 1,52,600/- for an initial period of 1 year commencing from 16th June, 2018, and the rent was to increase to a sum of Rs. 1,67,860/- with effect from 16th

June, 2019 for a period of 2 years expiring on 16th June, 2021, renewable for a further period of two terms of 3 years each subject to enhancement of rent. The Corporate Debtor had made payment of an interest free refundable deposit equivalent to the rent for three months.

iii. The Corporate Debtor had paid rent up to the period expiring on 31st May, 2019, in terms of the Indenture of Lease dated 22nd May, 2018.

iv. Further the Operational Creditor had raised 162 invoices on the Corporate Debtor till 12th June, 2023 on account of rent and maintenance charges (inclusive of GST) aggregating to a sum of Rs. 1,43,55,171.08, which had remained unpaid. (Annexure 6 at page 54 -215 of the petition)

v. The OC holds UDYAM Registration as a small manufacturer/ service provider for several services including and pertaining to real estate activities with owned or leased out properties. (Annexure 7 at page 216-224 of the petition).

vi. The OC had approached the West Bengal Micro and Small Enterprises Facilitation Council in terms of Section 18 of the Micro, Small and Medium Enterprises Development Act, 2006, as the Corporate Debtor failed to make payment of the outstanding rent and maintenance charges till 12th June, 2023, aggregating to a sum of Rs. 1,43,55,171.08. (Annexure 8 at page 225 of the petition).

vii. The Learned West Bengal Micro Small Enterprises Facilitation Council passed an arbitral award directing the Corporate Debtor to make payment of a sum of Rs. 2,14,84,485.90 to the Operational Creditor on 21st December, 2023. (Annexure 9 at page 234-235 of the petition).

viii. The Arbitral Award was served upon the Corporate Debtor and the Operational Creditor at the instance of the Learned West Bengal Micro Small Enterprises Facilitation Council on 19th February, 2024.

ix. Then the Corporate Debtor had challenged the said award passed by the West Bengal Micro Small Enterprises Facilitation Council by preferring an application under Article 227 of the Constitution of India before the Hon'ble High Court at Calcutta, which was heard and dismissed by the Hon'ble High Court at Calcutta on merits on 5th December, 2025.

x. The Corporate Debtor then challenged the judgment and order dated 5th December, 2025 passed by the Hon'ble High Court at Calcutta, before the Hon'ble Supreme Court of India, which had been dismissed by the Hon'ble Supreme Court of India by an order dated 22nd May, 2026.

xi. Ld. Counsel for the Applicant submitted that lease rent is an 'Operational Debt' in terms of Section 5(21) of the I&B Code, 2016, and the Corporate Debtor is not able to make payment of the lease rent to the Operational Creditor, and such inability had also been

recognized in the aforesaid Arbitral Award passed by the West Bengal Micro Small Enterprises Facilitation Council.

xii. Ld. Counsel for the Operational Creditor placed reliance on *Vaibhav Aggarwal v. Sunil Sachdeva & Anr., (2024) SCC Online NCLAT 764*, *Jaipur Trade Expocentre Pvt. Ltd. V. Metro Zet Airways Training Pvt. Ltd. (2022) SCC Online NCLAT 263*, in support of his contentions.

xiii. Ld. Counsel for the Operational Creditor further contended that the Hon'ble NCLAT in the matter of *Jaipur Trade Expocentre Pvt. Ltd. V. Metro Zet Airways Training Pvt. Ltd. (2022) SCC Online NCLAT 263*, held that license fee and lease rent are to be deemed as an operational debt in terms of Section 5(21) of the I&B Code, 2016, and held that the judgment passed in the matter of *M. Ravindranath Reddy v. G. Kishan, (2020) SCC OnLine NCLAT 84* and *Promila Taneja v. Surendri Design Pvt. Ltd., (2020) SCC OnLine NCLAT 115* as incorrect.

xiv. Ld. Counsel further contended that the judgment continues to hold the field unless it has been set aside or overturned by a larger bench or higher forum, and for that relied upon the judgment delivered by the Hon'ble Supreme Court in the matter of *Rajnish Kumar Rai v. Union of India & Ors., (2023) 14 SCC 782*.

xv. Ld. Counsel further contended that the reply filed by the Corporate Debtor is bereft of any particulars or any contemporaneous documents raising any pre-existing dispute, and the purported disputes in Title Suit No. 405 of 2021 [pending before the Court of the

Learned Civil Judge (Junior Division), 1st Court, at Barasat] or the dispute in Title Suit No. 4113 of 2021 [pending before the Court of the Learned Civil Judge (Junior Divison), 1st Court, at Barasat] cannot be brought on record by the Corporate Debtor through the supplementary Affidavit, as the leave granted by this Hon'ble Tribunal by its order dated 18th August, 2025, was restricted only to the MSME Award dated 21st December, 2023 and the steps taken by the Corporate Debtor in connection thereto.

xvi. Ld. Counsel further submitted that if the contentions of the Corporate Debtor in the Supplementary Affidavit is considered, then it is to be noted that the Title Suit No. 405 of 2021 and Title Suit No. 4113 of 2021 does not raise any dispute regarding the rent payable by the Corporate Debtor.

xvii. Further that the purported claim of the Corporate Debtor in damages, as made in the aforesaid suits, cannot be recovered as a set-off in an unconnected proceedings under Section 9 of the I&B Code, 2016, and the present proceeding was required to be connected to the suits in order to claim an equitable relief of set-off.

xviii. It is further argued that the Corporate Debtor failed to discharge its obligation to pay monthly rent for the premises, and denied the legitimate claim of the Operational Creditor by refusing to pay rent cannot take refuge of a purported claim in damages to fabricate setting up a false case of pre-existing dispute for alleged non-est claim

in damages and for that placed reliance upon the judgment delivered by the Hon'ble Supreme Court in the matter of *Raja Bhupendra Narain Singha Bahadur v. Maharaj Bahadur Singh & Ors., (1952) 1 SCC 436*.

xix. Further the Operational Creditor is registered as an MSME Unit under the Micro, Small and Medium Enterprises Development Act, 2006, and is entitled to receive compound interest on the unpaid amount of rent in terms of Section 16 of the Micro, Small and Medium Enterprises Development Act, 2006, and for that placed reliance on *Indian Highways Management Company Ltd. v. SOWIL Limited, 2021 SCC OnLine Del 5523 and Shristi Infrastructure Development v. Scorpio Engineering (P) Ltd., 2025 SCC OnLine Del 2985, Bharat Sanchar Nigam Ltd. v. Microtex Energy Pvt. Ltd., 2026 SCC OnLine BOM 1867*.

xx. The claim of the Operational Creditor on account of unpaid rent being a sum of Rs. 1,43,55,171.08, aggregates to a sum of Rs. 2,14,84,485.90 with compound interest of Rs. 71,29,314.82, and for that the Operational Creditor sent a demand notice dated 20th June, 2024, in Form 3.

5. Submissions of the Respondent:

i. It is submitted that there was no provision for interest at any rate under the lease deed and the invoices relied upon by the OC also do not contain any provision for interest, and as such the OC's claim towards interest cannot be sustained.

ii. It is further contended that the Operational Creditor had wrongfully and illegally disconnected the sub-meter standing in its name and stopped supplying water to the Corporate Debtor, and for that, the Corporate Debtor had lodged a police complaint before the Techno City Police Station on 10.12.2021, against the Managing Director of the Operational Creditor. (Annexure 9 at page 254 of the petition)

iii. Further that the Operational Creditor had overcharged the Corporate Debtor in regard to the excess area, maintenance and electricity charges.

iv. The Corporate Debtor filed two suits, being Title Suit Nos. 405 of 2021, and 416 of 2021, before the Learned Barasat Court, praying for declaratory reliefs, damages and compensation from the OC at the rate of Rs. 50,000/- a day from 12.05.2021 till restoration and resumption of supply of electricity and water in the said premises. (Annexure 9 at page 251 of the petition)

v. Further, an injunction has been passed on 15.09.2021 restraining the Operational Creditor from interfering with the Corporate Debtor's peaceful possession of the premises. The Operational Creditor disobeyed the said order of injunction which was subsisting, and the Corporate Debtor had approached the learned Barasat Court on 05.10.2021, directing the Techno City Police Station to ensure compliance with the order dated 15.09.2021. Both the suits are pending adjudication. (Annexure 9 at page 251 of the petition)

vi. Further, the Facilitation Council at the time of passing the award observed that the Corporate Debtor had a counterclaim, and in view of the pendency of the said suits stated "....would not make any comment on this issue....", which implies that there are pre-existing disputes. (Annexure 9 at page 267 of the petition)

vii. Ld. Counsel for the Respondent further submitted that the two suits for disconnection of electricity and water connection, and overcharging of lease rent were pending and existed prior to issuance of the Section 8 demand notice.

viii. Ld. Counsel relied upon the following judicial precedents in support of his contentions relating to pre-existing disputes:

i. GLS Films Industries Private Limited v. Chemical Suppliers Private Limited, 2026 SCC OnLine SC 551.

ii. Rajratan Babulal Agarwal v. Solartex India Private Limited, 2023 1 SCC 115

iii. Mobilox Innovations Pvt. Ltd. v. Kirusa Software Pvt. Ltd., (2017) ibclaw.in 01 SC

ix. Ld. Counsel further argued that Lease rent is not an Operational Debt and placed reliance on the decision of the Hon'ble NCLAT in *M. Ravindranath Reddy v. G. Kishan & Ors., 2020 ibclaw.in 95 NCLAT*, and *Promila Taneja v. Surendri Designs Private Limited, 2020 ibclaw.in 428 NCLAT*.

x. Ld. Counsel further contended that the judgment relied upon by the OC in *Vaibhav Aggarwal v. Sunil Sachdeva & Anr., (2024) SCC Online NCLAT 764* to contend that lease rent constitutes operational debt is pending consideration before the Hon'ble Supreme Court in Civil Appeal No. 10725 of 2024.

xi. Further that since the appeal was pending before the Hon'ble Supreme Court, the OC's reliance on the judgment cannot be sustained as the Hon'ble Supreme Court in *Dharam Dutt v. Union of India, 2004 1 SCC 712* (para 69) held that '*…filing of an appeal destroys the finality of the judgment under appeal…*'.

xii. Further that the judgment of the Hon'ble NCLAT in Vaibhav Aggarwal (supra) has been passed on the basis of the judgment of the Hon'ble NCLAT in *Jaipur Trade Expocentre Private Limited v. Metro Jet Airways Trading Private Limited, 2022 SCC OnLine NCLAT 263*, where the claim arose out of non-payment of license fee and not lease rent, and for that the OC's reliance on *Jaipur Trade* (Supra) is misplaced and misconceived warranting dismissal of the CP.

xiii. It is further submitted that contractual disputes arising from the lease deed as to whether lease rent was overcharged or whether the CD is entitled to claim damages cannot be urged in Section 9 of IBC proceedings, and can only be decided by the appropriate Civil Court by adducing of evidence and conducting trial and for that placed reliance on *Instyle Fashion v. Aditya Birla Fashion and Retail Limited,*

2024 SCC OnLine NCLAT 70, Puneet Kumar v. Computer Junction Pvt. Ltd. & Ors., 2025 SCC OnLine NCLAT 1654, Union Roadways Limited v. Ice Steel Pvt. Ltd., 2025 ibclaw.in NCLAT.

xiv. It is further argued that the present Company Petition is an attempt to execute or enforce the MSME Award passed on 21.12.2023 while placing reliance on *Anjani Technoplast Ltd. v. Shubh Gautam, 2026 SCC OnLine SC 668*, wherein the Hon'ble Supreme Court reiterated the object of the IBC and observed that every decree or award holder is not entitled to invoke the insolvency process in preference to execution.

xv. Ld. Counsel further contended that the OC has failed to comply with the mandatory provisions of Regulation 2B of the CIRP Regulations, 2016.

Analysis and Findings:

6. Issues:

Upon consideration of the pleadings, documents and rival submissions, the issues that arise for determination are as follows:

i. Whether lease rent falls within the purview of Operational Debt under Section 5(21) of the IBC?

ii. Whether the present IBC Proceeding proposing to turn it into a recovery mechanism amounts to an abuse of the Insolvency Process ?

iii. Whether the present Application under Section 9 of the IBC is barred due to the existence of a pre-existing dispute under Sections 8 and 9 of the IBC?

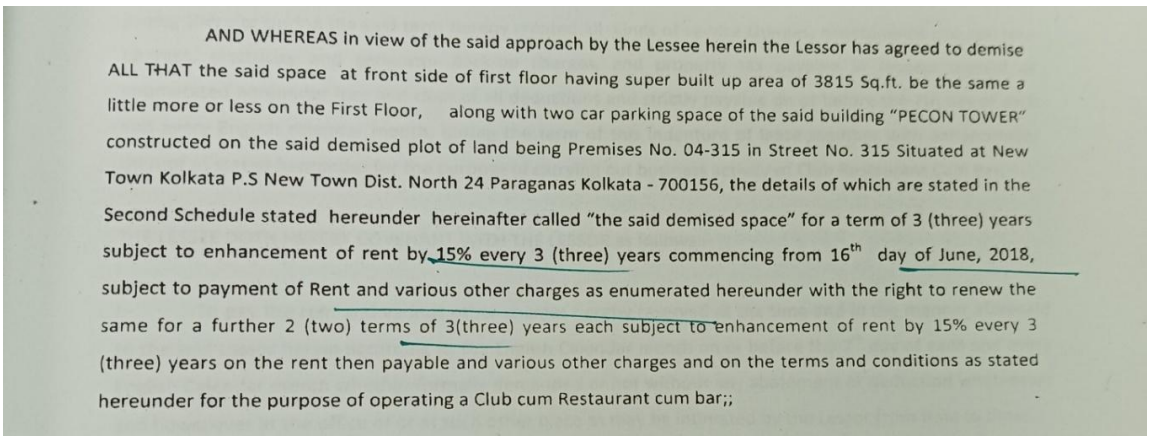
7. Discussions:

i. Whether Lease Rent for business purpose falls within the purview of Operational Debt under Section 5(21) of the IBC?

A. Discernible Facts:

i. At the outset, it is apposite to reiterate the settled legal position that the jurisdiction of the Adjudicating Authority under Section 9 of the Insolvency and Bankruptcy Code, 2016, can be invoked only in respect of an undisputed operational debt.

ii. The CD seems to have approached the OC for an accommodation on the first floor of the building owned by the OC for its business activity and for that an Indenture of Lease dated 22.05.2018 was executed between the parties for a period of 3 years from 16th June, 2018 to 16th June, 2021. (Annexure 4 at page 32-44 of the petition). The relevant extracts are given below:

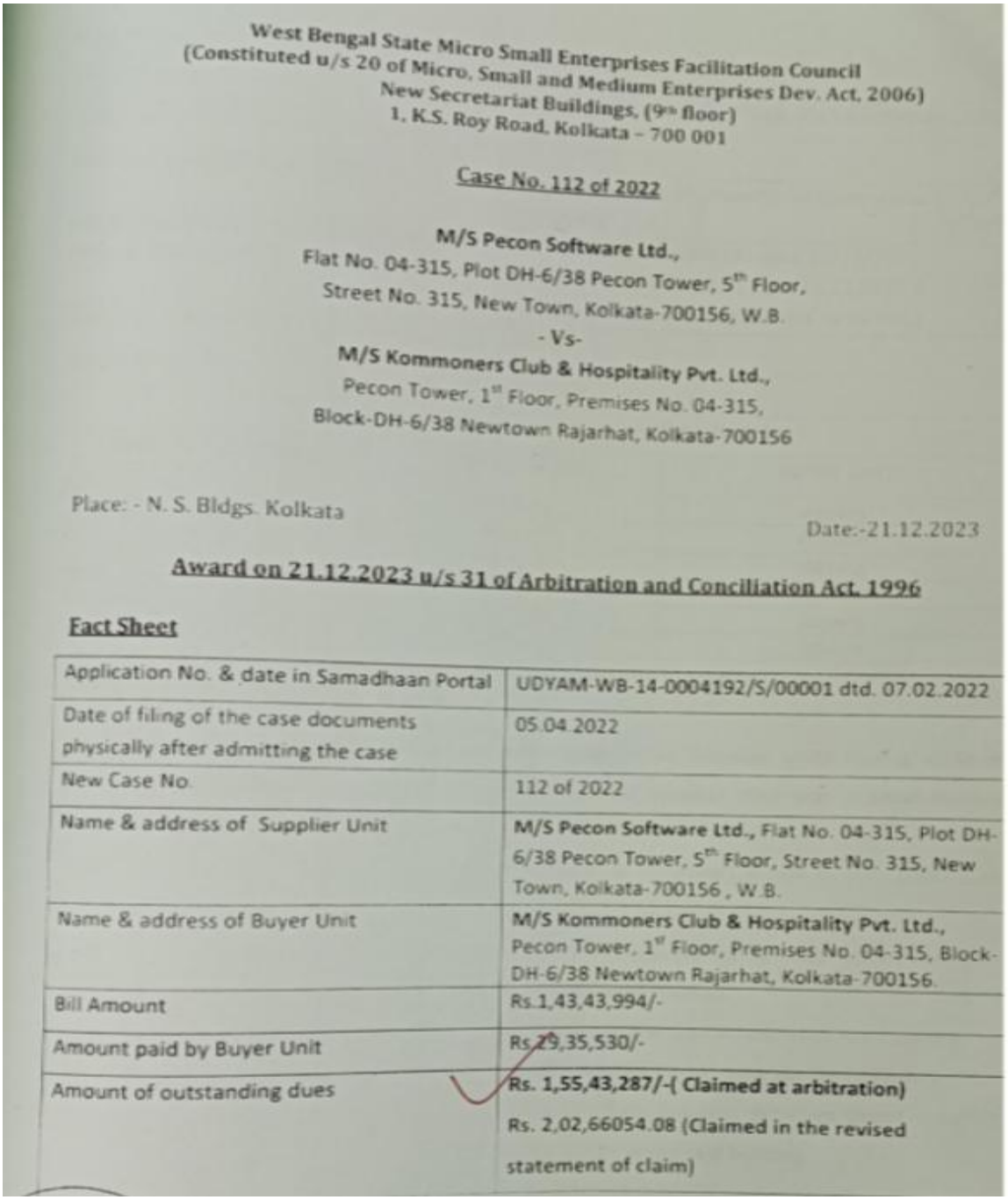


AND WHEREAS in view of the said approach by the Lessee herein the Lessor has agreed to demise ALL THAT the said space at front side of first floor having super built up area of 3815 Sq.ft. be the same a little more or less on the First Floor, along with two car parking space of the said building "PECON TOWER" constructed on the said demised plot of land being Premises No. 04-315 in Street No. 315 Situated at New Town Kolkata P.S New Town Dist. North 24 Paraganas Kolkata - 700156, the details of which are stated in the Second Schedule stated hereunder hereinafter called "the said demised space" for a term of 3 (three) years subject to enhancement of rent by 15% every 3 (three) years commencing from 16th day of June, 2018, subject to payment of Rent and various other charges as enumerated hereunder with the right to renew the same for a further 2 (two) terms of 3(three) years each subject to enhancement of rent by 15% every 3 (three) years on the rent then payable and various other charges and on the terms and conditions as stated hereunder for the purpose of operating a Club cum Restaurant cum bar;;

iii. Evidently, the Corporate Debtor had paid rent up to the period expiring on 31st May, 2019.

iv. After that the Operational Creditor had raised 162 invoices on the Corporate Debtor till 12th June, 2023 on account of rent and maintenance charges (inclusive of GST) aggregating to a sum of Rs. 1,43,55,171.08, which had remained unpaid.(Annexure 6 at page 54-215 of the petition)

v. It is observed that the Learned West Bengal Micro Small Enterprises Facilitation Council passed an arbitral award dated 21st December, 2023, directing the Corporate Debtor to make payment of a sum of Rs. 2,14,84,485.90 to the Operational Creditor towards unpaid lease rent. (Annexure 9 at page 234-235 of the petition). The relevant extracts are given below:



West Bengal State Micro Small Enterprises Facilitation Council
(Constituted u/s 20 of Micro, Small and Medium Enterprises Dev. Act, 2006)
New Secretariat Buildings, (9th floor)
1, K.S. Roy Road, Kolkata – 700 001

Case No. 112 of 2022

M/S Pecon Software Ltd.,
Flat No. 04-315, Plot DH-6/38 Pecon Tower, 5th Floor,
Street No. 315, New Town, Kolkata-700156, W.B.
- Vs-
M/S Kommoners Club & Hospitality Pvt. Ltd.,
Pecon Tower, 1st Floor, Premises No. 04-315,
Block-DH-6/38 Newtown Rajarhat, Kolkata-700156

Place: - N. S. Bldgs. Kolkata
Date:-21.12.2023

Award on 21.12.2023 u/s 31 of Arbitration and Conciliation Act, 1996

Fact Sheet

Application No. & date in Samadhaan Portal	UDYAM-WB-14-0004192/S/00001 dtd. 07.02.2022
Date of filing of the case documents physically after admitting the case	05.04.2022
New Case No.	112 of 2022
Name & address of Supplier Unit	M/S Pecon Software Ltd., Flat No. 04-315, Plot DH-6/38 Pecon Tower, 5th Floor, Street No. 315, New Town, Kolkata-700156 , W.B.
Name & address of Buyer Unit	M/S Kommoners Club & Hospitality Pvt. Ltd., Pecon Tower, 1st Floor, Premises No. 04-315, Block-DH-6/38 Newtown Rajarhat, Kolkata-700156.
Bill Amount	Rs.1,43,43,994/-
Amount paid by Buyer Unit	Rs.29,35,530/-
Amount of outstanding dues	Rs. 1,55,43,287/-(Claimed at arbitration) Rs. 2,02,66054.08 (Claimed in the revised statement of claim)

vi. The said award was challenged by the Corporate Debtor by preferring a Petition under Article 227 of the Constitution of India before the Hon'ble High Court at Calcutta, which was dismissed by an order dated 5th December, 2025. The Corporate Debtor then challenged the

judgment and order dated 5th December, 2025 passed by the Hon'ble High Court at Calcutta, before the Hon'ble Supreme Court of India, which was also dismissed by the Hon'ble Supreme Court of India by an order dated 22nd May, 2026.

It is relevant for us to look into the various provisions of the IBC and judicial pronouncements developing the jurisprudence of Operational Debt.

B. Applicable Statutory Provisions:

Section 3(11) of the IBC: *""debt" means a liability or obligation in respect of a claim which is due from any person and includes a financial debt and operational debt"*

5(21) of the IBC: *""operational debt" means a claim in respect of the provision of goods or services including employment or a debt in respect of the payment of dues arising under any law for the time being in force and payable to the Central Government, any State Government or any local authority"*

C. Judicial Precedents:

i. In ***Jaipur Trade Expocentre Pvt. Ltd. V. Metro Zet Airways Training Pvt. Ltd. (2022) SCC Online NCLAT 263***, the five judge bench of the Hon'ble NCLAT in para 40(2) held:

"The claim of Licensor for payment of license fee for use of Demised Premises for business purposes is an 'operational debt' within the meaning of Section 5(21) of the Code."

ii. Subsequently in ***Vaibhav Aggarwal v. Mr. Sunil Sachdeva and Anr., (2024) ibclaw.in 421 NCLAT***, the Hon'ble NCLAT relied on the *ratio decidendi* laid down in ***Jaipur Trade Expocentre Pvt. Ltd. V. Metro Zet Airways Training Pvt. Ltd. (2022) SCC Online NCLAT 263*** and held in para 16:

"....it is well settled that payment of license fee for use of leased premises for business purposes is clearly an operational debt. A conjoint reading of Sections 5(20) and 5(21) of IBC also clearly establishes that ***tenancy and lease rent dues*** *fall in the category of operational debt as defined under Section 5(21) of IBC."*

(emphasis added)

The Decision in ***Vaibhav Aggarwal v. Mr. Sunil Sachdeva and Anr.,*** on the issue whther lease rent constitutes Operational Debt is pending consideration before the Hon'ble Supreme Court.

iii. In ***Jaipur Trade Expocentre Pvt. Ltd. V. Metro Zet Airways Training Pvt. Ltd.*** **(supra),** the five judge bench of the Hon'ble NCLAT in para 40 had also held that:

"(1) Judgment of this Tribunal in ***Mr. M. Ravindranath Reddy*** *(supra) as well as judgment in* ***Promila Taneja****'s case does not lay down the correct law."*

In ***Mr. M. Ravindranath Reddy v. Mr G. Kishan & Ors., (supra)*** it was held that the alleged debt on account of purported enhanced rent of leasehold property does not fall within the definition of the

operational debt in terms of Section 5(21) of the Code and in ***Promila Taneja v. Surendri Design Pvt. Ltd.,*** ***(2020) ibclaw.in 428 NCLAT*** the Appellate Tribunal reaffirmed its earlier view that dues arising from lease of immovable property do not fall within operational debt under Sections 5(20) and 5(21) of the IBC.

iv. Further in ***Rajnish Kumar Rai v. Union of India & Ors., (2023) 14 SCC 782***, the Hon'ble Supreme Court in para 4 and 5 held that mere filing of an appeal does not destroy the finality of a judgment unless the decision has been set aside or overturned by a larger bench or higher forum.

D. Inference:

In view of the above discussion we are of the view that whether Lease Rent for business purpose or Rent for use of Leased Premises falls within the purview of "Operational Debt" under Section 5(21) of the IBC is yet to be conclusively decided.

ii. Whether the present IBC Proceeding amounts to an abuse of the Insolvency Process and in the nature of recovery mechanism?

A. Discernible Facts:

i. It is discernible that the Learned West Bengal Micro Small Enterprises Facilitation Council passed an arbitral award dated 21st December, 2023, directing the Corporate Debtor to make payment of a sum of Rs. 2,14,84,485.90 to the Operational Creditor.

ii. After that evidently the said award was challenged by the Corporate

Debtor by preferring a Petition under Article 227 of the Constitution of India before the Hon'ble High Court at Calcutta, which was dismissed on 5th December, 2025. The Special leave Petition against the said order was also dismissed before the Hon'ble Supreme Court of India by an order dated 22nd May, 2026.

iii. It is observed that the West Bengal Micro Small Enterprises Facilitation Council passed the award on 21.12.2023 and the OC has mentioned 22.12.2023, the very next date as date of default thus leaving no time for compliance. (Annexure 9 at page 234-235 of the petition)

iv. The natural and ordinary recourse available to the respondent was to execute the decree under the provisions of the Code of Civil Procedure, 1908, but the respondent chose not to avail it. Instead, he filed a petition under Section 9 of the IBC.

B. Judicial Precedents:

i. In ***Swiss Ribbons (P) Ltd. v. Union of India, (2019) 4 SCC 17***, the Hon'ble Supreme Court clearly and categorically explained the nature and object of the Code in paragraph 28 in the following words :

> *"28. It can thus be seen that the primary focus of the legislation is to ensure revival and continuation of the corporate debtor by protecting the corporate debtor from its own management and from a corporate death by liquidation. The Code is thus a beneficial legislation which puts the corporate debtor back on its feet, not being a mere recovery legislation for creditors. The interests of the corporate debtor have, therefore, been bifurcated and separated from that of its promoters/those who are in management..."*

(emphasis added)

ii. Similarly, in **Anjani Technoplast Ltd. v. Shubh Gautam, Civil Appeal No.*8247 of 2022*,** dated April 23, 2026, the Hon'ble Supreme Court has reiterated that the object of the IBC is to revive a Corporate Debtor as a going concern. Further every decree holder is not entitled to invoke the insolvency process in preference to execution. At para 31 the Hon'ble Supreme Court has held as follows:

> *"……. It does not mean that every decree holder who also happens to be a financial creditor is entitled, as a matter of right, to invoke the insolvency process in preference to execution….."*

(emphasis added)

iii. Subsequently in ***GLAS Trust Co. LLC v. BYJU Raveendran, (2025) 3 SCC 625***, the Hon'ble Supreme Court in paragraph 39.3 held:

> *"39.3. IBC must not be used as a tool for coercion and debt recovery by individual creditors. Improper use of the IBC mechanism by a creditor includes using insolvency as a substitute for debt enforcement or attempting to obtain preferential payments by coercing the debtor using insolvency proceedings. That the mechanism under the IBC must not be used as a money recovery mechanism has been reiterated in a consistent line of precedent by this Court."*

(emphasis added)

C. Inference:

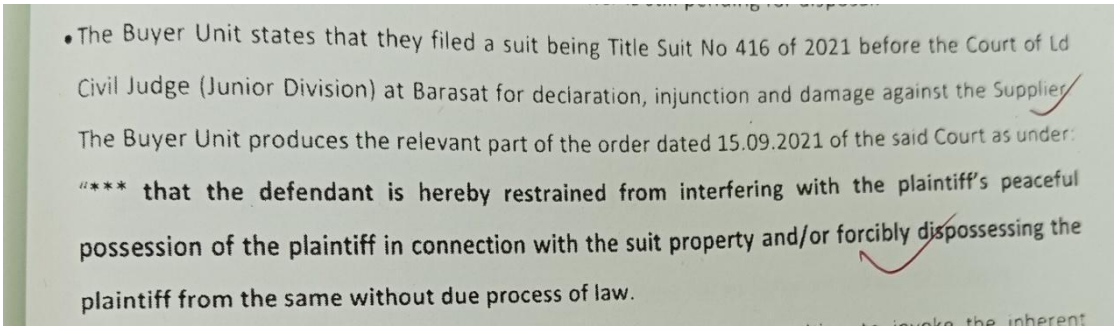
In this case, admittedly and inarguably the OC has filed the CP on the basis of the MSME Award without even going for the execution of the award, Given

the pronouncements enumerated supra the same can be construed as misuse of the insolvency process for recovery of alleged dues and ought to be depreciated.

iii. Whether the present Application under Section 9 of the IBC is barred due to the existence of a pre-existing dispute under Sections 8 and 9 of the IBC?

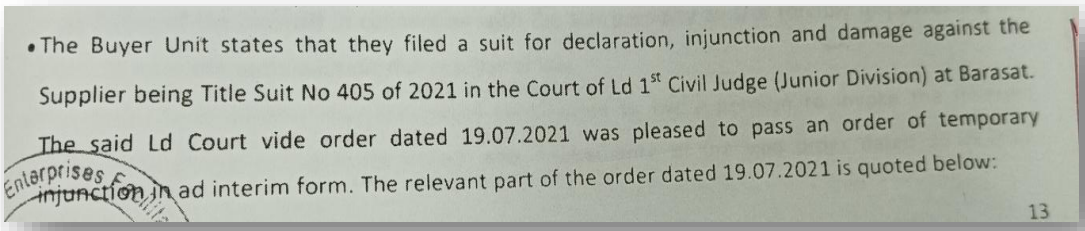
A. Discernible Facts:

i. It is observed that prior to issuance of notice under Section 8 of Code the Corporate Debtor filed two suits, being Title Suit Nos. 405 of 2021, and 416 of 2021, before the Learned Barasat Court, alleging disconnection of water supply and electricity nd overcharging lease rent and praying for declaratory reliefs, damages and compensation



- The Buyer Unit states that they filed a suit being Title Suit No 416 of 2021 before the Court of Ld Civil Judge (Junior Division) at Barasat for declaration, injunction and damage against the Supplier. The Buyer Unit produces the relevant part of the order dated 15.09.2021 of the said Court as under:

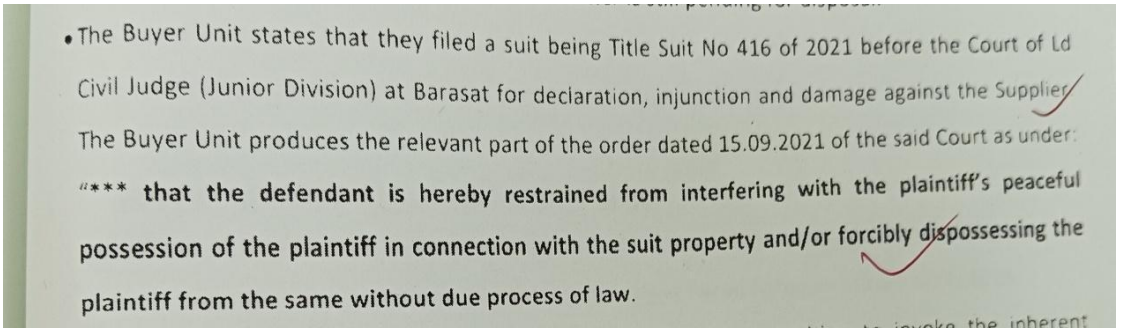
"*** **that the defendant is hereby restrained from interfering with the plaintiff's peaceful possession of the plaintiff in connection with the suit property and/or forcibly dispossessing the plaintiff from the same without due process of law.**



- The Buyer Unit states that they filed a suit for declaration, injunction and damage against the Supplier being Title Suit No 405 of 2021 in the Court of Ld 1st Civil Judge (Junior Division) at Barasat. The said Ld Court vide order dated 19.07.2021 was pleased to pass an order of temporary injunction in ad interim form. The relevant part of the order dated 19.07.2021 is quoted below:

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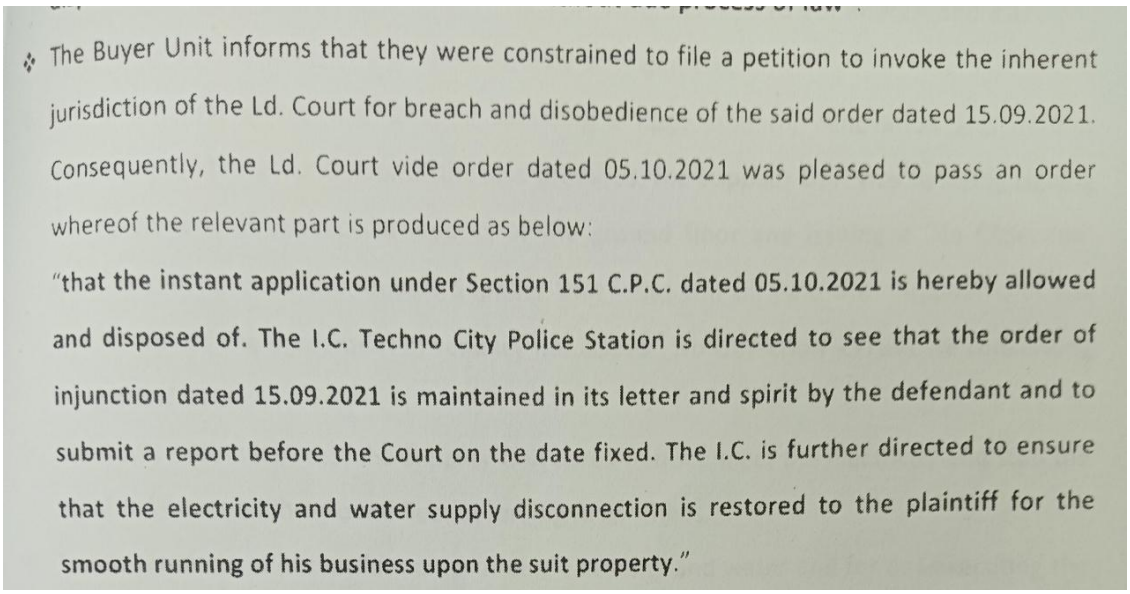
ii. Further an injunction has been passed on 15.09.2021 restraining the Operational Creditor from interfering with the Corporate Debtor's peaceful possession of the premises. (Annexure 9 at page 251 of the petition). The relevant extracts are given below:



- The Buyer Unit states that they filed a suit being Title Suit No 416 of 2021 before the Court of Ld Civil Judge (Junior Division) at Barasat for declaration, injunction and damage against the Supplier. The Buyer Unit produces the relevant part of the order dated 15.09.2021 of the said Court as under:

"*** **that the defendant is hereby restrained from interfering with the plaintiff's peaceful possession of the plaintiff in connection with the suit property and/or forcibly dispossessing the plaintiff from the same without due process of law.**

iii. The Corporate Debtor had approached the learned Barasat Court on 05.10.2021, directing the Techno City Police Station to ensure compliance with the order dated 15.09.2021, as the Operational Creditor disobeyed the subsisting order of injunction. (Annexure 9 at page 251 of the petition). The relevant extracts are given below:



- The Buyer Unit informs that they were constrained to file a petition to invoke the inherent jurisdiction of the Ld. Court for breach and disobedience of the said order dated 15.09.2021. Consequently, the Ld. Court vide order dated 05.10.2021 was pleased to pass an order whereof the relevant part is produced as below:

"**that the instant application under Section 151 C.P.C. dated 05.10.2021 is hereby allowed and disposed of. The I.C. Techno City Police Station is directed to see that the order of injunction dated 15.09.2021 is maintained in its letter and spirit by the defendant and to submit a report before the Court on the date fixed. The I.C. is further directed to ensure that the electricity and water supply disconnection is restored to the plaintiff for the smooth running of his business upon the suit property.**"

iv. Further the Corporate Debtor had lodged a police complaint before the

Techno City Police Station on 10.12.2021, against the Managing Director of the Operational Creditor. (Annexure 9 at page 254 of the petition). The relevant extracts are given below:

> The Buyer Unit states that they made a complaint by letter of complaint dated 10.12.2021 to the I.C. of Techno City Police Station sending through post inter alia alleging fraud committed by the Managing Director of the claimant.

B. Judicial Precedents:

i. Irrefutably and inarguably, the jurisdiction under Section 9 of the IBC can only be exercised in case of an undisputed Operational Debt. Where a real and substantial dispute exists between the parties prior to issuance of the demand notice under Section 8 of the Code, the Adjudicating Authority is duty-bound to reject the application at the threshold.

ii. The legal test for determining the existence of a "dispute" under Sections 8 and 9 of the Code has been authoritatively laid down by the Hon'ble Supreme Court in ***Mobilox Innovations Pvt. Ltd. v. Kirusa Software Pvt. Ltd., reported in (2018) 1 SCC 353***. The Hon'ble Court held that the Adjudicating Authority is required to examine whether there is a plausible contention requiring further investigation and that the dispute is not a patently feeble legal argument or an assertion unsupported by evidence. The relevant extracts are given below:

"40. It is clear, therefore, that once the operational creditor has filed

an application, which is otherwise complete, the adjudicating authority must reject the application under Section 9(5)(2)(d) if notice of dispute has been received by the operational creditor or there is a record of dispute in the information utility. It is clear that such notice must bring to the notice of the operational creditor the "existence" of a dispute or the fact that a suit or arbitration proceeding relating to a dispute is pending between the parties. Therefore, all that the adjudicating authority is to see at this stage is whether there is a plausible contention which requires further investigation and that the "dispute" is not a patently feeble legal argument or an assertion of fact unsupported by evidence. It is important to separate the grain from the chaff and to reject a spurious defence which is mere bluster. However, in doing so, the Court does not need to be satisfied that the defence is likely to succeed. The Court does not at this stage examine the merits of the dispute except to the extent indicated above. So long as a dispute truly exists in fact and is not spurious, hypothetical or illusory, the adjudicating authority has to reject the application."

(Emphasis added)

It is to be noted that the defense setup by the CD is not a sham or spurious one.

iii. In ***SFO Technologies Pvt. Ltd. v. Vanu India Pvt. Ltd., (2023) ibclaw.in 389 NCLAT***, the Hon'ble NCLAT has observed:

"38. Be it noted, that the Proceedings under the I&B Code 2016, are summary in character and a trial is not conducted, like that of 'Civil' matter before the 'Competent Civil Court'."

(Emphasis added)

iv. Subsequently, in ***Style Fashion v. Aditya Birla Fashion and Retail Ltd., (2024) ibclaw.in 17 NCLAT***, the Hon'ble NCLAT has also observed that:

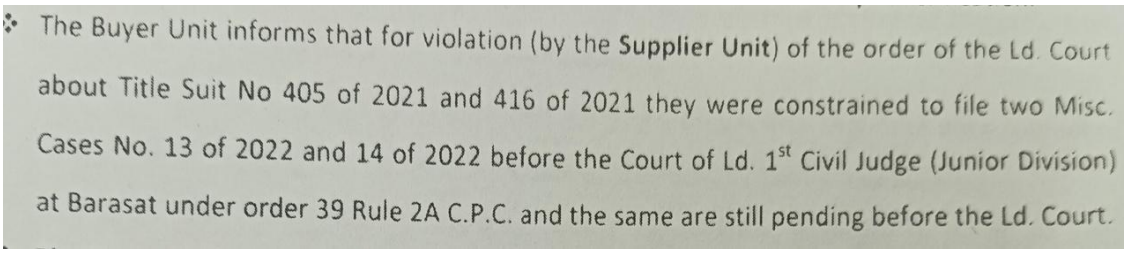
"26. It is well settled that in Section 9 proceeding, the Adjudicating Authority is not to enter into final adjudication with regard to existence of dispute between the parties regarding the operational debt. What has to be looked into is whether the defence raises a dispute which needs

further adjudication by a competent court. In our considered view, if we apply the above cited test laid down in Mobilox supra by the Hon'ble Supreme Court to the facts of the present case, it is clear that defence raised by the Corporate Debtor in their reply to the Section 8 demand notice and detailed reply filed in Section 9 application is not illusory or moonshine and that the nature of dispute raised was such that it required adjudication by competent court."

(Emphasis added)

C. Inference:

i. It is observed that the two suits for disconnection of electricity and water connection and overcharging of lease rent were pending and existed prior to issuance of the Section 8 demand notice. (Annexure 9 at page 251 of the petition). The relevant extracts are given below:



- The Buyer Unit informs that for violation (by the **Supplier Unit**) of the order of the Ld. Court about Title Suit No 405 of 2021 and 416 of 2021 they were constrained to file two Misc. Cases No. 13 of 2022 and 14 of 2022 before the Court of Ld. 1st Civil Judge (Junior Division) at Barasat under order 39 Rule 2A C.P.C. and the same are still pending before the Ld. Court.

ii. Thus, disputes between the parties regarding charging of lease rent existed long before the issuance of the Section 8 Demand Notice, and such disputes require in depth trial, and require adjudication before the appropriate forum.

iii. Once the existence of a pre-existing dispute is established, this Adjudicating Authority is precluded from entering into an examination of the merits of the claims or adjudicating upon the correctness of the rival contentions. The Insolvency and Bankruptcy Code is not

intended to be used as a substitute for a civil trial or as a forum for the resolution of complex contractual and factual disputes.

8. Conclusion:

In view of the above discussion, we hold that the provisions of the IBC is misused, as the object of the IBC is revival and maximization of value of assets of the Corporate Debtor and cannot be used as a recovery mechanism, and further existence of a pre-existing dispute between the parties stands clearly established prior to the issuance of the demand notice under Section 8 of the Code.

9. Order:

In view of this, the Petition being C.P. (IB) No. 263/KB/2024 is dismissed and pending I.A. being I.A. (IB) No. 2273/KB/2024 is disposed of in the above terms.

10. Certified copies of the order, if applied for with the Registry of this Adjudicating Authority, be supplied to the parties upon compliance with all requisite formalities.

REKHA KANTILAL SHAH **BIDISHA BANERJEE**

MEMBER (TECHNICAL) **MEMBER (JUDICIAL)**

This Order is signed on this, the 27th Day of August, 2026.

Sagar M. (LRA)