

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

Company Appeal (AT) (Insolvency) No. 916 of 2025

**[Arising out of the Impugned Order dated 12.06.2025 passed by the
Adjudicating Authority, National Company Law Tribunal, Indore Bench
in C.P. (IB) No. 29/9/MP/2020]**

In the matter of:

Yusuf Malubhaiwala

S/o Mr. Zoyab Ali Malubhaiwala
R/o 208 & 209, Saify Nagar,
Manikbag Road,
Indore-452 014 (M.P.)
Email: yusuf452001@gmail.com

.... Appellant

Versus

**1. Mr. Anuj Maheshwari
Insolvency Resolution Professional
Steelexpert Industries (Indore) Ltd.**

Pranam, 5, Tulsi Villa,
3/1, Old Palasia, Greater Kailash Road,
Indore (M.P.)-452 018
Email: ipanyjmaheshwari@gmail.com

.... Respondent No.1

2. Haji Shahadat & Sons

Through its Sole Proprietor
Mr. Abdul Maaz
121, Chhota-Sonapur,
M.S. Ali Road, Mumbai-400 008
Email: hajishahadatandsons@gmail.com

.... Respondent No.2

Present:

For Appellant : Mr. Abhijeet Sinha, Sr. Advocate with Mr. Vijayesh Atre
and Ms. Heena Kochar and Ms. Aarya Chhangani,
Advocates for Appellant.

For Respondent : Ms. Soumya Dharwa, Advocate for R1.

Mr. Krishnendu Dutta, Sr. Advocate with Mr. Malak Bhatt,
Mr. Rushabh Shah, Ms. Neeha Nagpal and Ms. Nitya
Prabhakar, Advocates for R2.

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 12.06.2025 (hereinafter referred to as **'Impugned Order'**) passed by the Adjudicating Authority (National Company Law Tribunal, Indore Bench) in C.P. (IB) No. 29/9/MP/2020. By the impugned order, the Adjudicating Authority has admitted the Section 9 application filed by the Respondent No.2-Operational Creditor and admitted the Corporate Debtor into the rigours of Corporate Insolvency Resolution Process (**"CIRP"** in short). Aggrieved by the impugned order, the present appeal has been preferred by the Appellant-ex Director of the Corporate Debtor.

2. Coming to the brief facts of the case at hand, the Respondent No.2-Operational Creditor is a sole proprietorship concern of Mr. Abdul Maaz who owns two concerns namely Haji Shahadat & Sons and Maaz Exports under a common GST registration number. The Operational Creditor had entered into a business transaction with the Appellant-Steelexpert Industries in the trading and supply of iron and steel materials. The Operational Creditor has claimed that the Corporate Debtor made only partial payments and failed to clear the entire outstanding amount despite repeated requests following which they issued a Demand Notice under Section 8 of IBC on 17.10.2019 to which the Corporate Debtor had responded by sending a Notice of Dispute on 26.10.2019. As no payment was forthcoming, the Operational Creditor filed two separate

applications under Section 9 of the IBC vide Company Petitions No. 29 and 37 of 2020. In Company Petition No. 29 of 2020, which is presently before us, the Operational Creditor claimed a debt of Rs 2,32,98,535/- comprising of Rs 1,56,44,009/- towards supplies made and Rs 76,54,526/- towards interest. The Adjudicating Authority having considered in the matter passed the impugned order on 12.06.2025 admitting the Section 9 application by holding that the Notice of Dispute issued by the Corporate Debtor with respect to pre-existing disputes lacked substantiation and that the Operational Creditor had successfully established an operational debt and default which was above the threshold limit. Aggrieved by the impugned order, the Appellant has come up in appeal.

3. Making submissions on behalf of the Appellant, Shri Abhijeet Sinha, Ld. Sr. Counsel for the Appellant has submitted that the Corporate Debtor has already cleared the entire outstanding amount of the Operational Creditor. Hence, the assertion of the Operational Creditor that the principal claim was still outstanding was false and misconceived. The Corporate Debtor had also duly accounted for the invoices submitted by the Operational Creditor and made cash payments to them which is supported by duly signed cash receipts from the Operational Creditor and been properly recorded and reflected in their books of accounts and ledger. It was submitted that the Operational Creditor had admittedly acknowledged the receipt of Rs 1,81,84,460/- from the Corporate Debtor in cash as consideration amount towards supplies made by them and there was no debt which was due and payable. Submission has been further pressed by the Appellant that the Operational Creditor has predicated their

outstanding amount on the strength of an undated and unsigned certificate issued by the Chartered Accountant (C.A.) and that too with a caveat from the C.A. that the complete audit of books of accounts had not been carried out by them. Questioning the validity of this C.A. certificate, it was pointed out that the outstanding debt of Rs 1,56,44,009/- reflected in the said certificate does not synchronize with the amount claimed in the Section 8 Demand Notice.

4. It was vehemently contended that there was a serious pre-existing dispute which arose prior to the issue of Section 8 Demand Notice which can be evidenced from the fact that they had filed a police complaint at Indore on 08.08.2019 and with the Deputy Commissioner of Police, Mumbai on 09.08.2019 complaining about their commercial dispute with the Operational Creditor. It was contended that since both these police complaints were prior to the Section 8 Demand Notice, this clearly testified pre-existing dispute. Besides police complaints, they had also approached the District and Session Court of Indore in a Civil Suit for adjudicating their ongoing commercial dispute which buttresses the fact that there was commercial dispute between themselves. Further the fact that the Operational Creditor had themselves also filed a police complaint before the Mumbai Police challenging the cash receipts produced by the Corporate Debtor leading to registering of a criminal case also testifies commercial dispute. The same cash receipts which constitute one of their principal grounds of dispute came to the notice of High Court of Bombay in the anticipatory bail application which in its orders had recorded that there was a serious commercial dispute ongoing between the parties. Therefore, when the veracity of the cash receipts is sub-judice before the High Court of Bombay, it

clearly signifies that there was ample evidence of pre-existing dispute between the parties.

5. It was emphatically asserted that in their reply to the Section 8 Demand Notice they had raised a Notice of Dispute on 26.10.2019. This by itself was sufficient basis to conclude that a pre-existing dispute had been raised by the Corporate Debtor. It was emphasised that there are a catena of judgements of this Tribunal where it has been held that the Section 9 provision of the IBC is not for the purpose of debt recovery but to facilitate resolution of the Corporate Debtor and in the present case where the Corporate Debtor is financially solvent, the Operational Creditor cannot be allowed to misuse the Section 9 provision of IBC for arm-twisting the Corporate Debtor to settle commercial disputes. It was also asserted that it is well settled that any relevant information about pre-existing disputes, even if raised at the stage of filing reply to the Section 9 application, is required to be considered by the Adjudicating Authority to prevent misuse and abuse of Section 9 proceedings.

6. It was asserted that once the plausibility of a pre-existing dispute comes to notice, it is not required of the Adjudicating Authority to make further detailed investigation for any such dispute falls within the domain of the competent civil court to adjudicate. In the present factual matrix, when there was ample proof of a clear pre-existing dispute between the parties which had its roots before the issue of the Section 8 Demand Notice and these disputes were adverted attention to in the reply Notice to Demand Notice as well as in the Reply to the Section 9 application, in terms of the judgment of the Hon'ble Supreme Court in ***Mobilox Innovations Pvt. Ltd. Vs Kirusa Software Pvt. Ltd. (2018) 1 SCC 353***, the

Adjudicating Authority could not have admitted the Section 9 application by disregarding such glaring pre-existing disputes. The Adjudicating Authority had gravely erred in holding the Section 9 application inadmissible on grounds of pre-existing disputes.

7. Refuting the contentions made by the Corporate Debtor, Shri Krishnendu Datta, Ld. Sr. Counsel for the Respondent No.2-Operational Creditor submitted that the Corporate Debtor had been placing orders for supply of goods from time to time and these have been supplied by them which fact is validated by invoices, delivery challans and e-way bills. The material supplied by the Operational Creditor have been utilized by the Corporate Debtor without any demur or protest regarding the quality of the goods supplied. The Corporate Debtor had made delayed payments in multiple instalments but eventually on having committed a default in the payment of unpaid operational debt, the Operational Creditor issued reminders for payment. The Corporate Debtor ignored these reminders compelling the Operational Creditor to issue a Demand Notice on 17.10.2019 for payment of Rs 2,32,98,535/- which was followed by filing of a Section 9 application which was rightly admitted by the Adjudicating Authority. The Hon'ble Supreme Court in ***Mobilox Innovations judgment supra*** has held that a pre-existing dispute must not only have arisen prior to issue of statutory demand notice but should be real, bonafide and supported by evidence which is not so in the present case. The defence raised by the Corporate Debtor of pre-existing disputes being moonshine defence, it was vehemently contended that the impugned order is a well-reasoned order and that the Adjudicating Authority

had rightly come to the conclusion that there was no pre-existing dispute between the parties.

8. Debunking the plea taken by the Corporate Debtor of pre-existing disputes, it was contended that the Appellant had failed to demonstrate any contemporaneous commercial dispute between the parties. The purported pre-existing dispute in the context of police complaints filed by the Appellant before the Section 8 Demand Notice did not qualify to be a pre-existing dispute as these complaints did not relate to the operational debt which had been claimed by the Operational Creditor besides the fact that there were incongruities and inconsistencies in these complaints. In support of their contention, reliance has been placed on the judgment of this Tribunal in ***Aroon Kumar Aggarwal Vs ABC Consultants Pvt. Ltd. in CA(AT)(Ins) No. 409 of 2020*** in which it has been held that disputes must directly relate to the operational debt. It was further submitted that the bogey of Civil Suit as a ground of pre-existing dispute is also an after-thought as it had arisen after the issue of Section 8 Demand Notice. In support of their contention, reliance has been placed on the judgment of this Tribunal in ***G.T. Polymers Vs Keshava Medi Devices Pvt. Ltd. CA(AT)(Ins.) No. 1266 of 2019*** in which it has been held that any suit filed after the statutory demand notice cannot constitute a pre-existing dispute in terms of Section 5(6) of the IBC.

9. It has been further contended by the Operational Creditor that the defence taken by the Corporate Debtor of cash payments made by them to the Operational Creditor was false and contrived. The cash receipts were not even signed by the Operational Creditor nor issued on their authorised letter head.

Further, these cash receipts have been issued much later than the date on which the payment was claimed to have been made which shows that the cash receipts were not genuine. The books of account of the Corporate Debtor also do not disclose corresponding cash withdrawals which puts question marks on the plausibility of the payment claimed to have been made by the Corporate Debtor. The claim of cash payments made by the Appellant did not even figure in their reply to the Section 8 Demand Notice but cropped up abruptly in their reply to the Section 9 application before the Adjudicating Authority which amply proves that the Corporate Debtor was constantly improvising grounds to build up an illusory defence as an afterthought.

10. We have duly considered the arguments advanced by the Learned Counsel for the parties and perused the records carefully.

11. The short point for consideration is whether there was any discernible pre-existing dispute surrounding the debt claimed to be due and payable by the Corporate Debtor.

12. It is the case of the Appellant that they had already paid the entire outstanding amount to the Operational Creditor. In substantiation of their contention, it was submitted that the Appellant had withdrawn cash of Rs 2,91,75,000/- from SBI and PNB during the period of 17.03.2016 to 24.04.2018 and out of this amount, payment of Rs 1,81,84,460/- was defrayed to the Operational Creditor. It is further contended that all the invoices raised by the Operational Creditor and the cash payments made by the Corporate Debtor to the Operational Creditor has been duly reflected in their books of account and ledger. The Operational Creditor had received the entire amount in cash and had

issued three cash receipts in acknowledgement which have been placed at pages 284-286 of the Appeal Paper Book (**APB**). Hence, the entire outstanding amount of the Operational Creditor stood fully squared out and this fact was also clarified at para 2 in their reply dated 26.10.2019 to the Section 8 Demand Notice. Hence, the claim of the Operational Creditor that the principal amount was still outstanding was false and misconceived and the finding of the Adjudicating Authority that the Corporate Debtor had not discharged their full liability establishing default was flawed.

13. Per contra, it is contended by the Operational Creditor that all relevant invoices had been submitted to the Corporate Debtor and as per the terms and conditions of the invoices, the Corporate Debtor was required to make payment within 7 days failing which penalty at the rate of 24% p.a. on the unpaid amount was leviable. As outstanding amounts continued to remain unpaid by the Corporate Debtor, they issued a Demand Notice on 17.10.2019 for payment of Rs 2,32,98,535/-. In support of their contention that payments were still outstanding from the Corporate Debtor, a certificate from the Bank of India and CA has been placed on record as can be seen at pages 194 and 195 of APB respectively. The Operational Creditor has also submitted the invoices, delivery challans and e-way bills which have been placed at page 139 to 182 of the APB.

14. When we look at the impugned order at para 20 thereof, we find that the Adjudicating Authority has noticed the contention of the Appellant that they have paid Rs. 1,87,82,060/- in cash which is supported by receipts and bank withdrawals of Rs. 2,91,75,000/-. The Adjudicating Authority has also noticed the rival contention of the Operational Creditor that its business model was

primarily based on banking channels through RTGS/NEFT with some small cash- based transactions. After noticing rival submissions, the Adjudicating Authority has held that they have not been convinced by the defence of cash receipts for the reason that the cash receipts were unsigned; because large cash payments in business-to-business transactions are unusual; and big-ticket cash transactions require robust evidence which are amiss barring self-serving ledger entries of the Appellant which are sans independent verification.

15. We now proceed to return our findings on the tenability of the contention of the Appellant of cash payments having been made by them with relevant cash-receipts being in their possession whether its denial by the Operational Creditor can be held to be a genuine pre-existing dispute.

16. We find that three cash receipts have been placed on record by the Appellant at pages 284-286 of the APB which depict receipt of Rs 32,39,460/- dated 25.04.2017; receipt of Rs 1,19,20,000/- dated 30.04.2019 and receipt of Rs 30,25,100/- dated 30.04.2019. Undisputedly these three cash receipts clearly pre-date the issue of Section 8 Demand Notice of 17.10.2019. The Appellant has also submitted a cash withdrawal table made by them at pages 239-240 of APB in support of their defence to demonstrate that cash payments were actually made to the Operational Creditor. The credulity and authenticity of these cash receipts have however been questioned by the Operational Creditor on the ground that these receipts were not signed by them nor issued on their authorised letter head and were therefore clearly fabricated and forged. Submission was pressed that the cash receipts of the Appellant are not supported by corresponding bank withdrawals or contemporaneous accounting

records made by the Appellant. For FY 2017–18, when Rs. 1.19 Cr was purportedly paid in cash, the Appellant's bank records show nil withdrawals and during FY 2018–19, bank withdrawals made is only Rs.1.20 lakhs as against alleged payments made of Rs. 30.25 lakhs. No other explanation has been offered or financial disclosures made by them as to the source of cash. Furthermore, the three cash receipts add up only to Rs. 1.81 Cr while the cash withdrawal table placed on record demonstrates Rs 1.87 Cr having been paid to the Operational Creditor. Such stark contradictions in the financial entries and records of the Appellant go to destroy the credibility of the claim of the Appellant. Further relying on the judgment of this Tribunal in ***Poonam Gupta Vs Suman Chadha in CA(AT)(Ins) No. 771 of 2019*** wherein claims of large cash payments unsupported by credible material had been rejected, it was contended that the defence of advance cash payment taken in the present matter is therefore a moonshine defence.

17. We do not wish to go into the issue whether the cash receipts were forged or not as that is not within the remit and scope of either the Adjudicating Authority or this Tribunal. We agree with the Appellant who have relied on the judgment of this Tribunal in ***Jaginder Singh Lather vs AU Small Finance Bank in CA(AT)(Ins) No. 375 of 2018*** to hold that this Appellate Tribunal cannot decide as to whether any document produced by a party is forged and fabricated or not. In view of the summary jurisdiction of Adjudicating Authority and this Tribunal, matters which need to be adjudicated upon evidence need not be deliberated here and hence we do not wish to make any observations of the authenticity of the cash receipts.

18. Be that as it may, we are of the considered view that this Tribunal is not precluded from taking a call on the plausibility of the cash receipts as a ground of genuine pre-existing disputes. We find that two cash receipts of different periods bear the same date of 30.04.2019. It defies both common logic as well as standard business practice that any entity making cash payment would not insist on a receipt immediately on making the cash payment. Even if we give the benefit of doubt to the Appellant that they were in the practice of obtaining consolidated cash receipts from the Operational Creditor such delayed acknowledgement of a cash transaction of such a big amount is quite uncharacteristic in the ordinary course of business or commercial arrangement. However, what strikes a more discordant note is that the Appellant has conspicuously failed to explain as to why these cash receipts were never brought to the attention of any authority or any agency by them before the commencement of the Section 9 proceedings in the event that they were already available with them. The plea of alleged cash payments and supporting cash receipts was never made part of the police complaints but has been introduced for the first time only in reply to the Section 9 petition. Though the police complaints formed the foundational basis of the civil suit filed on 25.11.2019 in which even an amended version of the police complaint was added but it remains unexplained why the cash receipts were not placed on record if they were supposedly already in existence. What is still more baffling is as to why the Appellant in their Reply Notice dated 26.10.2019 to the Section 8 Demand Notice as seen at pages 190-193 of the APB did not disclose either the cash receipts or adduce any proof of cash payments or advance settlement. Not making this

critical assertion at the stage of a statutory reply cannot be taken lightly as it defies commonsense as to why any party if it had such a genuine defence of prior payment at its command shy away from producing these documents when they had all the opportunity and the reasons for doing so. This clearly shows that the narrative of cash receipts was created as an after-thought rendering the defence of cash payment a feeble one which cannot be sustained.

19. This brings us to another ground of pre-existing dispute which has been vehemently contended by the Appellant as borne out by the fact that that the Corporate Debtor had filed a police complaint at Indore on 08.08.2019 complaining against the Operational Creditor that their henchmen had unlawfully threatened and tried to illegally extract money from them. The Corporate Debtor had also intimated Commissioner of Police, Mumbai on 09.08.2019 complaining about their apprehension that the Operational Creditor may lodge a false case against them. Both these police complaints were prior to the Section 8 Demand Notice and thus in chronological terms clearly pre-existing.

20. Repelling the contentions of the Appellant, it is contended by the Operational Creditor that reliance upon these police complaints cannot be said to constitute a pre-existing dispute as the focus of the complaint was on personal threats and not linked to any commercial dispute arising out of the present operational debt. It was submitted that any valid dispute under Section 5(6) read with Section 8(2)(a) of the IBC ought to relate directly to the operational debt and no such articulation having been made in the police complaints, to contend that

the police complaints signified a pre-existing dispute was misconceived and untenable.

21. It may be useful to have a glance at both the police complaints which are as reproduced below:

Date: 8/8/19

To,
Hon'ble Officer In-Charge,
Raoji Bazar Police Station,
Indore

Hon'ble Sir,
Mr Abdul Maj Chaudhari from Mumbai and his several relatives arrived at my shop around 1 this morning and started exerting pressure on me to pay him and settle account with him immediately. In response, I asked him to return in the morning, over which he became upset and tried to exert pressure on me that I will have to settle the account there and then and began issuing threats to me.

Sir, as per the accounts of mutual transactions between two firms, I am to receive Rs 23,524/-.

When the situation threatened to become grim, I made a call to 100 helpline number and am now submitting this application for protection so that no untoward incident takes place against me.

You are requested to take appropriate action on this.

Yusuf Malubhaiwala

Date:- 9 August 2019

To,
Hon'ble Commissioner of Police,
Mumbai

Subject: - About false FIR likely to be lodged against me.

Hon'ble Sir,

This is to inform that I, the Applicant, Yusuf Bhai, S/O Joeb Ali Malubhaiwala, am a Director of Steel Expert Industries Indore Ltd situated at 7, Hathipala Road, Juni Indore, Indore and that we deal in steel. I had transactions of steel with Abdul Maj Chaudhari, Proprietor of Haji Shahadat Ali And Sons situated at 21, Chhota Sonapur, MS Ali Road, Mumbai 400008.

On 8th August 2019, Abdul Maj Chaudhari arrived at my office situated under jurisdiction of Raoji Bazar Police Station, District Indore, Madhya Pradesh, along with 12-15 persons in four wheelers and started exerting pressure on me after showing false and misleading fabricated accounts, thereby trying to make illegal recovery. Abdul Maj and his accomplices issued threats to me and my family members working in my office, after which we found ourselves unsafe and called on helping number 100 to inform the police. Abdul Maj and his accomplices went away after the police arrived. However, while going away they issued threat to implicate me in falsely fabricated case in Mumbai.

Because of their threat, I apprehend that he may attempt to lodge a falsely fabricated case or FIR against me at any police station in Mumbai. Therefore, I pray to you to kindly intimate me and conduct an inquiry prior to file any type of falsely fabricated FIR and protect me from the fraud committed by these people.

Yusuf Bhai

22. On a plain reading of the above complaints, it is clear that the thrust of police complaint dated 08.08.2019 primarily relate only to allegations of intimidation and harassment caused by the Operational Creditor for payment and settlement of accounts. Interestingly, the Respondent has pointed out that the Corporate Debtor had submitted two different versions of the same complaint of 08.08.2019 bearing the same time-stamp of 10.35 pm. This dual version of the police complaint dated 08.08.2019 has not been denied by the Appellant. In one version, as it appears at page 144 of the APB, the Appellant claims that the Operational Creditor owed them Rs 23,524/- while in the other version which is placed by the Respondent at page 144 of their reply shows that the Appellant admittedly owed Rs 19,46,624/- to the Operational Creditor. This shifting stance lends credence to the fact that the Corporate Debtor was contriving grounds for improving their case as an afterthought. Apart from this inconsistency in both

these complaints on who owed money to whom as well as variation in the sum involved, it is pertinent to notice that the complaints do not make any mention about invoices or goods supplied by the Operational Creditor or even allude to the three cash receipts being in their possession which has been pressed upon by the Appellant later to establish pre-existing dispute. When the two supposedly identical police complaints are themselves mutually contradictory and differ on material facts and fail to pinpoint that the complaint specifically relate to the operational debt in question or is related to the quality or quantity or consideration amount of the goods supplied by the Operational Creditor, these shortcomings expose the unreliable nature of this defence.

23. We therefore find substance in the contention of the Respondent that the defence of pre-existing dispute cannot succeed basis such police complaints which complaints do not bear any direct linkage or have clear-cut nexus with the operational debt. In support of their contention, reliance was placed on the ratio of the judgment of this Tribunal in ***Aroon Kumar Aggarwal Vs ABC Consultants Pvt. Ltd. in CA(AT)(Ins) No. 409 of 2020*** which held that the plea of pre-existing dispute has to co-relate with the amount claimed by the Operational Creditor and therefore find that this judgement does lend support to the argument canvassed by the Operational Creditor. Having said that, we do not find any reason to differ with the Adjudicating Authority which has held in the impugned order at para 19 therein that the police complaint dated 08.08.2019 alleging threats by the Operational Creditor citing inconsistent amounts was unrelated to the claimed debt and did not specifically dispute either the invoices or supply made. When the police complaint was not directly

relatable to the commercial dealing between the two parties but was filed more as a safeguard against coercion, threat, intimidation and illegal recovery, this cannot be construed as pre-existing dispute between the parties. Hence, the present police complaints fail to meet the yardstick set by the Hon'ble Supreme Court in ***Mobilox judgement supra*** that a pre-existing dispute must not only exist prior to the demand notice but the dispute over the debt must also be sufficiently and adequately substantiated by evidence. The tone and tenor of the police complaint do not reveal clear nexus with any commercial dispute having roots in the past.

24. Besides the police complaints, it is also the case of the Corporate Debtor that the ongoing Civil Suit proceedings going on in the District and Session Court of Indore for adjudicating their ongoing commercial dispute was sufficient to prove the pre-existing dispute. Reference was also made to the fact that following a case for criminal offence lodged against them by the Operational Creditor, the promoters of the Corporate Debtor had moved the High Court of Bombay seeking anticipatory bail wherein in their interim order dated 03.10.2023 it was recorded that prima-facie it appeared that the offences have their genesis in the commercial disputes between the parties. Since this case had their genesis in the forgery of cash receipts and the matter was still sub-judice, it was contended by the Appellant that this clearly substantiates that the claims of the Operational Creditor was embroiled in pre-existing disputes.

25. Per contra, it is the contention of the Respondent the reliance placed on the Civil Suit proceedings in the Indore Court cannot be construed to be a pre-existing dispute since this suit was filed after the issue of Section 8 Demand

Notice. In support of their contention, reliance has been placed on the judgment of this Tribunal in ***G.T. Polymers Vs Keshava Medi Devices Pvt. Ltd. CA(AT)(Ins.) No. 1266 of 2019*** in which it has been held that any suit filed after the statutory demand notice cannot constitute a pre-existing dispute in terms of Section 5(6) of the IBC.

26. Coming to our findings, we notice that the Adjudicating Authority has taken notice of the Civil Suit at para 19 of the impugned order and observed that the suit was filed after the Section 9 application and did not qualify as a pre-existing dispute. We do not find any reasons to disagree with the Adjudicating Authority on this count. As regards the anticipatory bail application proceedings, apart from the fact that this proceeding had been initiated post the Section 8 Demand Notice, the relevant interim order dated 03.10.2023 was in the context of a criminal complaint for deciding anticipatory bail and not for adjudication on the existence of operational debt or discharge of any default thereof. Thus, the Civil Suit or Anticipatory Bail application proceedings which have been filed after filing of Section 9 application cannot be used to defeat a validly filed Section 9 application on grounds of pre-existing dispute.

27. This brings us to the Notice of Dispute dated 26.10.2019 sent by the Appellant to the Operational Creditor. It is contended by the Appellant that in this reply at para 3, they had raised the contention that the entire amount has been received by the Operational Creditor and also referred to the police complaints filed by them at para 4.11 therein. Thus, when they had denied their liability and also raised the issue of pre-existing dispute by way of police complaints, that shows that there was pre-existing dispute between the parties.

28. When we take a look at the relevant paras of the Notice of Dispute which is placed at pages 190-193 of the APB, this reply is found to be replete with inconsistencies. It has been denied at Para 1 therein that there was any written agreement with the Operational Creditor for supply of goods by them. It was also pointed out at Para 4.5 therein that the Corporate Debtor had never placed any purchase order, telephonic or otherwise on the Operational Creditor at any point of time. It has been contended at paras 4.2 and 4.7 that the Operational Creditor had fraudulently created documents to extract money and that invoices were manipulated documents as material was never supplied. The Corporate Debtor has also denied any outstanding amount payable to the Operational Creditor. But quite to the contrary, at para 4.10, it has been stated that all the material purchased by the Corporate Debtor from the Operational Creditor has been paid in full from time to time and that they have discharged their entire financial liability. Quite clearly, paras 4.4 and 4.10 are in clear contradiction of each other. When the Corporate Debtor was claiming not to have received any goods from the Operational Creditor or any invoice from them, we fail to appreciate as to for what purpose then cash payments were made by them to the Operational Creditor. This puts serious question marks on the Reply Notice of the Corporate Debtor.

29. Most significantly in para 4.11 of the reply to the Demand Notice, the Appellant has stated that they had explained their entire transaction with the Operational Creditor but what is most striking is that there is no mention of the three cash receipts to substantiate proof of payment anywhere in the reply to the Demand Notice. Neither does the cash payment figure in the police complaint

filed by the Corporate Debtor. Also, there is no assertion made in the Civil Suit filed by them that payments were made in cash towards the outstanding dues. That these cash receipts have been produced much later while filing reply to the Section 9 application in June 2020 reinforces the plea taken by the Operational Creditor that this defence was an afterthought. No other dispute except police complaint finds place in the Reply to the Section 8 Demand Notice. We have already dealt with the police complaint and ascribed reasons for not finding them to be a plausible defence to substantiate pre-existing dispute.

30. On the ground raised by the Corporate Debtor that filing of two Section 9 applications by Haji Shahadat & Sons and Maaz Exports tantamount to abuse of process lacks basis since both these entities were distinct and separate and therefore were entitled to file separate Section 9 applications. Hence, there was no infirmity on the part of the Adjudicating Authority in rejecting this objection raised by the Corporate Debtor. Further the objection raised by the Corporate Debtor that a sole proprietorship is not a juristic person and hence not competent to file a Section 9 application also lacks merit. As submitted by the Respondent, Section 9 application filed by sole proprietors in their personal name or trade name have been held to be maintainable by this Tribunal in its judgment in ***Neeta Saha Vs Ram Niwas Gupta in CA(AT)(Ins) No. 321 of 2021*** and in ***Mateshwari Minerals Vs Jet Granito Pvt. Ltd. in CA(AT)(Ins) No. 776 of 2020***.

31. Given the conspectus of facts and circumstances surrounding this case, we are not convinced that the disputes are genuine, real or pre-existing. Once the dispute raised appears to be an eyewash which do not truly exist in fact, the

Adjudicating Authority cannot be faulted for exercising its discretion in admitting the Section 9 application against the Corporate Debtor. Present is a case where the Adjudicating Authority was not satisfied, for reasons cogently explained in the impugned order, with the purported disputes raised by the Appellant and hence proceeded to allowed the Section 9 application which action was not violative of the ***Mobilox judgement supra***. We are inclined to agree with the Adjudicating Authority that the Corporate Debtor cannot claim immunity from Section 9 proceeding initiated by the Operational Creditor for such contrived, improvised and moonshine disputes.

32. From the aforesaid discussion and analysis of facts and circumstances, we are of the considered opinion that the Appellant has clearly defaulted in the payment of operational debt above the prescribed threshold level and further in the absence of any discernible and bonafide pre-existing dispute, we sustain the impugned order passed by the Adjudicating Authority admitting the application under Section 9 of IBC filed by the Operational Creditor. We find no merit in this Appeal. The Appeal is dismissed. We also affirm the directions contained in the impugned order regarding defraying of fees/expenses of the Resolution Professional by the Operational Creditor. No order as to costs.

[Justice Ashok Bhushan]
Chairperson

[Barun Mitra]
Member (Technical)

Place: New Delhi

Date: 10.12.2025

Abdul