



IN THE NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI BENCH (COURT – II)

Item No. 201
(IB)-757/ND/2023

IN THE MATTER OF:

Multiplier Brand Solutions Private Limited

B1/G3, 2nd Floor,
Mohan Co-operative Industrial Estate,
Main Mathura Road,
New Delhi-110044

**... Petitioner/
Operational Creditor**

Versus

Amazon Wholesale (India) Private Limited

Block E, 14th Floor, Unit Nos. 1401 to 1421
International Trade Tower, Nehru Place,
South Delhi, New Delhi-110019

**... Respondent/
Corporate Debtor**

Under Section: 9 of IBC 2016

Order delivered on 05.03.2024

CORAM:

SH. ASHOK KUMAR BHARDWAJ, HON'BLE MEMBER (J)

SH. SUBRATA KUMAR DASH, HON'BLE MEMBER (T)

PRESENT:

For the Applicant : Mr. Neeraj Malhotra, Sr. Adv., Adv. Lakshmeesh S. Kamath, Adv. Rajesh Khandelwal, Adv. Samriti Ahuja, Adv. Rohit Patil, Adv. Nimish Gupta

For the Respondent : Mr. Krishnendu Datta, Sr. Adv., Adv. V.P. Singh, Adv. Raghav Seth, Adv. Arnab Ray, Adv. Ankitesh Ojha, Adv. Varsha

Hearing Through: VC and Physical (Hybrid) Mode

ORDER

Indubitably, an agreement was entered into between the Petitioner viz., Multiplier Brand Solutions Private Limited and Amazon Wholesale (India) Private Limited on 01.05.2019 regarding service provision etc. Clause 1.1 to 1.3 of the agreement reads thus:-



1.1. Services. Service Provider will provide services to Amazon on non-exclusive basis, in accordance with the terms and conditions of this Agreement (**“Services”**) as the Parties may, from time to time, agree and specify in work orders (**“Work Orders”**) issued or signed by Amazon. The agreed form of Work Order is attached as Exhibit A to this Agreement. Any Affiliate of Amazon will have the right to enter into Work Orders with Service Provider under this Agreement, and with respect to such Work Orders, such Affiliate becomes a Party to this Agreement and references to Amazon in this Agreement are deemed to be references to such Affiliate. With respect to Amazon, each Work Order is a separate obligation of the Amazon entities or entity that execute(s) such Work Order and no other Amazon Affiliate entity has any obligation under such Work Order Amazon makes no promises or representations whatsoever as to the amount of business Service Provider can expect at any time under this Agreement. It is further clarified that nothing in this Agreement prevents Amazon or any of its Affiliates from procuring same or similar Services from any other third party.

1.2. Work Orders. This Agreement governs each Work Order, except that any conflict between the terms of this Agreement and a Work Order will be resolved in favor of the Work Order, if the Work Order explicitly states that it is intended to modify the conflicting terms of this Agreement. This Agreement does not obligate Amazon to engage Service Provider to perform any Services, or Service Provider to perform any Services, until both Parties have signed a Work Order. Both Parties must sign a Work Order for it to be effective.

Notwithstanding the aforesaid, a Work Order will be binding on both Parties if Service Provider: (a) signs and returns it to Amazon; (b) begins performance; or (c) acknowledges it by email, facsimile or any other commercially reasonable means. If Service Provider commences Services for Amazon in the absence of a Work Order and Amazon accepts such Services, this Agreement will nevertheless apply, unless the Parties otherwise mutually agree in writing Service Provider will, at no cost to Amazon, promptly and satisfactorily correct any Services or Work Product found to be defective or not in conformity with the requirements of this Agreement and the applicable Work Order.

1.3. On-Site Services. If Service Provider provides Services on Amazon premises, Service Provider will, and ensure that its Personnel will: (a) abide by all Amazon’s rules, policies, and procedures regarding such matters as safety, security, health, environmental and hazardous



material management, misconduct, physical aggression harassment and theft (collectively, “Rules”), and (b) at Amazon’s request, remove and promptly replace any Personnel (defined in Section 6 below) performing Services who behaves in a manner that is unlawful or inconsistent with any Rules.”

2. It is also not in question that on 01.04.2021 a Novation and Substitution Agreement was entered into at Bangalore between Amazon Seller Services Private Limited and Amazon Wholesale (India) Private Limited. The agreement was endorsed by the Petitioner before us viz., Multiplier Brand Solutions Private Limited. The relevant excerpt of the agreement reads thus:-

“NOW THIS AGREEMENT WITNESSETH THAT:

1. *From and after the Effective Date:*
 - 1.1. *The Parties hereby agree that Transferee will replace Transferor in relation to and under the Principal Agreement. All references to Transferor under the Principal Agreement will be construed to be references to Transferee and the Principal Agreement vis-à-vis Transferor will stand novated and transferred in favour of Transferee.*
 - 1.2 *Notwithstanding anything contained in the Principal Agreement, Transferor will relinquish and waive all its rights, interests, liabilities and obligations under the Principal Agreement and Transferee will be entitled to all such rights, interests and will discharge all such liabilities, obligations of Transferor under the Principal Agreement (whether arising before or after the Effective Date).*
 - 1.3. *All obligations or liabilities arising under this Agreement or the Principal Agreement (whether arising before or after the Effective Date) may only be enforced by Company against Transferee directly, and not against Transferor.*
2. *The Principal Agreement and this Agreement will be read and construed as one document and this Agreement will be considered to be part of the Principal Agreement.*
3. *The provisions on governing law (at Section 9.2) and dispute resolution (at Section 9.8) of the Principal Agreement will be deemed*



to be incorporated under this Agreement and be applicable to Transferee and Company.”

3. It is seen from the novation agreement that the principal agreement and the novation agreement were construed as one document.

4. After execution of novation agreement (ibid), a renewal to master services agreement was entered into between the Petitioner and the Corporate Debtor on 01.05.2021.

5. Mr. Neeraj Malhotra, Ld. Sr. Counsel for the Petitioner could refer to Page 38, 43, 48, 53, 58, 62, 67 & 70 of the petition to espouse that the corporate debtor had placed it’s purchase orders on the petitioner. He could also make reference to the invoices placed on record at page 77 to 84 of the petition. A reference is also made to certain communications between the petitioner and the corporate debtor to buttress that while raising the invoices, the Petitioner had sought approval from the corporate debtor regarding the cost/price of the services rendered, which was duly approved at the end of the corporate debtor. One of the e-mails placed on record at Page No. 112 & 113 of the petition reads thus:-

Vaibhav Mathur
9871278777 | vaimat@amazon.com

From: Sonu Singh <sonu.singh@multiplier.co.in>
Sent: Thursday, March 30, 2023 11:17 AM
To: Mathur, Vaibhav <vaimat@amazon.com>
Cc: Khilar, Kunal <khilark@amazon.com>; Anurag Jaiswal <anuragi@multiplier.co.in>; Krishan Ray <k.ray@multiplier.co.in>; AR Centralized <arcentralized@multiplier.co.in>; Sharma, Siddharth B <sidshb@amazon.com>; Chimwal, Varun <vchimwal@amazon.com>; Deepanshu, Kumar <kumdeek@amazon.com>; Kumar, Jitender <jitkumi@amazon.com>; Shukla, Abhishek <abshsk@amazon.com>; Anshul Tomar <anshul@multiplier.co.in>
Subject: [EXTERNAL] Reminder: Approval-Amazon Device Cost for March 23
Importance: High

CAUTION: This email originated from outside of the organization. Do not click links or open attachments unless you can confirm the sender and know the content is safe.

Dear Vaibhav,

Please find attached the Amazon Device Cost for the month of Mar'23.


Please provide your approval against the attached Amazon Device Cost for the month of Mar'23.

Particulars	Month	Amount Rs.
FIRE TV	Mar-23	93,89,187
Total:		93,89,187

Particulars	Month	Amount Rs.
ECHO	Mar-23	81,94,587
Total:		81,94,587

Thanks & Regards
Sonu Singh

Program Manager
multiplier





2nd Floor, B-1/ G-3, Mohan Co-operative Industrial Estate,
Mathura Road, New Delhi – 110044
M +91 9811308331
www.multiplier.co.in

29 NOV 2023

From: Sonu Singh
Sent: Monday, March 27, 2023 4:43 PM
To: vaimat@amazon.com
Cc: Khilar, Kunal khilar@amazon.com; Anurag Jaiswal anuragj@multiplier.co.in; Krishan Ray k.ray@multiplier.co.in; AR Centralized arcentralized@multiplier.co.in; Sharma, Siddharth B sidsh@amazon.com; Chimwal, Varun vchimwal@amazon.com; Deepanshu, Kumar kumdeek@amazon.com; Kumar, Jitender jitkumj@amazon.com; Shukla, Abhishek abshk@amazon.com; Anshul Tomar anshul@multiplier.co.in
Subject: FW: Approval-Amazon Device Cost for March 23

Dear Vaibhav,

Please find attached the Amazon Device Cost for the month of Mar'23.

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ECHO	Mar-23	81,94,587
Total:		81,94,587

Thanks & Regards
Sonu Singh

Program Manager

multiplier

2nd Floor, B-1/ G-3, Mohan Co-operative Industrial Estate,
Mathura Road, New Delhi – 110044
M +91 9811308331
www.multiplier.co.in

29 NOV 2023

6. It is also the submission put forth by Mr. Neeraj Malhotra that the representative of the corporate debtor had admitted the delay in repaying the amount. In this regard he made reference to the e-mail placed on record at Page No. 119 to 120 of the paper book, which reads thus:-

Annexure - K

Tuesday, May 23, 2023 at 12:39:12 India Standard Time

119

Subject: FW: Re: Funding for Amazon Client
Date: Tuesday, 23 May 2023 at 12:38:59 PM India Standard Time
From: Parveen Choudhary
To: Parveen Choudhary
Attachments: image001.png

From: Inder Arora inder.arora@multiplier.co.in
Date: Tuesday, 2 May 2023 at 4:02 PM
To: Sameer Mehta sameer.mehta@multiplier.co.in
Cc: Rupinder Singh rupinder.singh@multiplier.co.in, Reema Arora reema.arora@multiplier.co.in, Anurag Jaiswal anuragj@multiplier.co.in
Subject: Funding for Amazon Client

Dear Sameer sir

Requesting your approval to fund Amazon Salary as due to some last-minute approval payment which was expected on 29th Apr is now expected on 5th May.



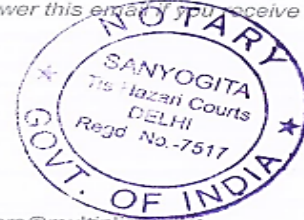
Client is apologetics to us on this delay & also requested support for this time to release salary by today if possible. (Client email in trail)

Regards
Inder Arora
GM: Operations & Client Success
M: +91-9171580058



B-1/ G-3, 2nd Floor, Mohan Co-operative Industrial Estate,
Mathura Road, New Delhi – 110044

I support healthy work-life harmony. Please do not feel obliged to answer this email if you receive it beyond your working hours.



→ **From:** Mathur, Vaibhav <vaimat@amazon.com>
Sent: Tuesday, May 2, 2023 3:55 PM
To: Anurag Jaiswal <anuragj@multiplier.co.in>; Inder Arora <inder.arora@multiplier.co.in>
Subject: RE: Settlement delay for amount invoiced by Multiplier

Adding Inder Arora

29 NOV 2023

From: Mathur, Vaibhav
Sent: Tuesday, May 2, 2023 3:54 PM
To: 'Anurag Jaiswal' <anuragj@multiplier.co.in>
Subject: Settlement delay for amount invoiced by Multiplier



Hi Anurag

The below invoices are ready for payment but delayed for settlement. These were expected to be paid by 29-Apr as per credit terms given to Multiplier. While, I am working with Amazon account payables team to assess the reasons for delay, we expect the invoices to get settled within 2-3 working days (invoice no's mentioned below). Request you to check that May salary disbursement for field team is not hindered by this delay

- ✓ Invoice # 1: X41220706426 (Amount: ~INR 80 lacs)
- ✓ Invoice # 2: X41220706425 (Amount: ~INR 69 lacs)

Thanks and Regards
Vaibhav Mathur
9871278777 | vaimat@amazon.com

7. Mr. Neeraj Malhotra could also take pain to deal with the defence of the corporate debtor. For the purpose, he could make reference to Annexure-H to the reply and submitted that the complaint lodged was regarding the mischief made by the employees of the Petitioner regarding the services provided to Amazon Seller Services Pvt. Ltd. and not qua the Corporate Debtor before us. He could also make reference to the arbitration notice (invocation of arbitration) placed on record at Page 43 of the reply and submitted that the arbitration invoked is again not regarding the amount of the invoices referred to by him, but is in respect of the different amount. For the purpose he made reference to para 6 of the notice dated 01.12.2023 placed on record at Annexure-B to the reply. To conclude the submissions, Mr. Neeraj Malhotra espoused that in terms of the provisions of Section 8 and 9 of IBC, 2016 read with Regulation 7 of IBBI (CIRP)



Regulations, 2016, while considering the petition filed under Section 9 of IBC, 2016 for admission, what this Tribunal need to see is as to whether there is a contract regarding supply of goods & services entered into between the parties; the invoices raised by the operational creditor; the orders of Tribunal/Courts, if any passed; and the financial accounts or relevant extracts of Form GSTR-1 and Form GSTR-3B filed under the provisions of relevant laws relating to GST of e-way bills. According to him, he has already drawn the attention of this Tribunal to the contact, e-mails, purchase orders and the admission of liability by the corporate debtor, thus the present petition need to be admitted. He could also make reference to Annexure-Q to his rejoinder to buttress the plea that the doubt regarding the genuineness of the invoices involved a different brand and different company and not the corporate debtor before us. The Annexure reads thus:-

Date: 13 February 2024

STRICTLY CONFIDENTIAL

Multiplier Brand Solutions Pvt Limited
Corporate Centre & Registered Office
B1/G3, 2nd floor, Mohan Co-operative Industrial Estate
Main Mathura Road, New Delhi-110044

For the attention of Mr. Sameer Mehta - CEO (Multiplier Brand Solutions Pvt Limited)

Dear Sameer,

We have completed the work steps (Project Multiply) to assist Multiplier Brand Solutions Pvt Limited ("Company") in carrying out a fact-finding investigation. Our work product (written report) resulting from our engagement is provided herewith.

We are issuing this letter upon your request, and do certify that the Fact Finding Report dated 13 February 2024, titled as "Project Multiply" was undertaken and prepared by us in relation to only one of the identified project undertaken by you i.e., Vodafone (VI) ~~Project~~ for and on behalf of with Amazon Seller Services Pvt Ltd.

Scope of our work

Our procedures were performed in accordance with the engagement letter dated 27 March 2023, and subsequent addendum dated 31 May 2023. Our procedures were limited to those described in the letter of engagement.

Verification of the authenticity of data or documents provided for the review was beyond the scope of this engagement.

Restrictions on the use of our work product

Our report is intended solely for the information and use of the Company's management and is not intended to be and should not be used by anyone other than these specified parties. Ernst & Young LLP (EY) therefore assumes no responsibility to any user of the report other than Multiplier Brand Solutions Pvt Limited. Any other persons who choose to rely on our report shall do so entirely at their own risk.

We would like to take this opportunity to thank you and your team for the cooperation and assistance received by us in the execution of this assignment.

Should you have any questions regarding our work product(s), please do not hesitate to contact me at +91 9867553313

Yours faithfully,

For Ernst & Young LLP

Arpinder Singh
Partner

✓ Enclosure: Report date 13 February 2024 - Project Multiply

CP(IB)-757/ND/2023

Multiplier Brand Solutions Private Limited vs. Amazon Wholesale (India) Private Limited



8. To espouse that the novation and the substitution agreement dated 01.04.2021 did not completely bring the corporate debtor in place of Amazon Seller Services Pvt. Ltd., he made reference to the invoices placed on record at Page 37 & 43 of the rejoinder to emphasize that these are the invoices raised after 01.04.2021 i.e. after the date of novation and substitution agreement, thus despite there being novation and substitution agreement entered into between Amazon Seller Services Pvt. Ltd. and Amazon Wholesale (India) Pvt. Ltd., the Petitioner was rendering services to Amazon Seller Services Pvt. Ltd. and the transaction deed entered into by the Petitioner with the two companies need to be looked at differently and there should be no confusion regarding the complaints made by the Petitioner itself against its employees regarding the invoices raised qua Amazon Seller Services Pvt. Ltd., while he is alleging the default committed by the corporate debtor.

9. Per contra Mr. Krishnendu Datta, Ld. Sr. Counsel appearing for the Corporate Debtor could refer to the novation and substitution agreement (ibid) and submitted that after 01.04.2021, all the liabilities/rights/interest/entitlements/obligations inter se the Petitioner and Amazon Seller Services Pvt. Ltd. could be assigned to the corporate debtor and any transaction entered into by the Petitioner with Amazon Seller Services Pvt. Ltd. cannot be looked at in separation from the one entered into between the Petitioner and the Corporate Debtor.

10. Referring to his reply, Mr. Datta submitted that the petitioner has time and again admitted the Amazon's claim that the fake invoices were raised by it. The relevant excerpt of the reply reads thus:-

*“e. On 08.03.2023, Amazon responded to the Petitioner's email dated 07.03.2023. Amazon did not approve the Petitioner's cost estimate for February 2023 as the Petitioner had requested approval of salaries for its employees who were suspended by the Petitioner on account of the discrepancies in the sales data for December 2022. A copy of the email dated 08.03.2023 is annexed hereto and marked as **Annexure-‘K’**.*



- f. *Pertinently, the Petitioner has time and again admitted and acknowledged Amazon's claims regarding the fraudulent conduct of the Petitioner in raising false and inflated invoices based on phantom sales and ghost services. The Petitioner, in its email dated 23.03.2023, again confirmed that it had initiated a fact-finding investigation at its end to unearth the abuse and fraud to identify the actual culprits. A copy of the email dated 23.03.2023 is annexed hereto and marked as **Annexure –'L'**.*
- g. *Notably, the Petitioner categorically acknowledged that its employees which had provided services to the Respondent are suspects and are being investigated for the fraud and sales data abuse in an email dated 30.06.2023. The Petitioner informed Amazon that a number of its employees deployed by the Petitioner on various Amazon projects, including those providing services to the Respondent, have joined the Petitioner's competitor. The Petitioner further stated that even back-office staff deployed by the Petitioner for Amazon's projects have joined the same competitor. Notably, the Petitioner admitted that many "of such team members/back-office staffs as above said are even suspects and are under investigation in the whole gambit of allegations of data abuse and fraud." This was reiterated by the Petitioner in its email dated 02.08.2023. Consequently, this amounts to a clear admission of 'fraud' by the Petitioner and its employees, evidencing the existence of disputed in relation to the services provided under the MSA much prior to the Demand Notice. Copies of the emails dated 30.06.2023 and 02.08.2023 are annexed hereto and marked as **Annexure – 'M'.**"*

11. According to Mr. Krishnendu Datta, Ld. Sr. Counsel once the Petitioner itself could raise a doubt regarding the genuineness of certain claim/invoices raised by its employees on Amazon Seller Services Pvt. Ltd., the corporate debtor cannot be unjustified in having similar doubts regarding the invoices raised qua it. With reference to the e-mail dated 02.06.2023, which was sent by the Corporate Debtor to the Petitioner much before 03.11.2023 i.e. the date on which the Petitioner issued demand notice, Mr. Krishnendu Datta submitted that the Corporate Debtor has raised the dispute regarding genuineness of the



claims/invoices raised by the Petitioner right from the year 2017. The e-mail reads thus:-

From: RUHIL, DEVENDER <ruhil@amazon.com>
Date: Friday, 2 June 2023 at 6:47 PM
To: Sameer Mehta <sameer.mehta@multiplier.co.in>, Rupinder Singh <rupinder.singh@multiplier.co.in>
Cc: Ajmani, Gaurav <ajmanig@amazon.com>
Subject: Privileged and confidential_Data needed

Dear Sameer and Rupinder,

This is in reference to our meeting today. As discussed, request if you could share the following data at the earliest:

#	Particulars
1	Demo data since program initiation i.e. Q4 2017 till date
2	Records maintained, if any to follow up with customer
3	Sales data since program initiation i.e. Q4 2017 till date
4	Incentive paid to promoters, cluster managers and program head, etc. - detailed break up with computation
5	List of all the stores along with the start date of the operations
6	List of all the employees working on the program along with their date of joining, compensation details, designation, contact numbers, address and details of store associated
7	List of all the devices purchased, leased under the program along with date of purchase, device id, store association details etc.
8	All the invoices raised under the program along with underlying supporting documents such as: i) Invoices for salary payments along with employee wise payment breakup, proof of payments such as salary slips, pf returns. ii) Invoices for mobile devices/ lease reimbursement along with payment proof, original invoice, list of mobile devices iii) Invoices for incentive along with employee wise computations, proof of payments, approvals taken etc. iv) Invoices for expense reimbursements with proof of payments, supporting documents
9	Relevant email communication with Amazon POC wherein approvals were obtained for incentives, salary, reimbursement, store opening and payment approvals.
10	Attendance records of all the employees working under the program since 2017
11	Agreements and all subsequent addendums entered with Amazon
12	SOPs prepared to operate under this program, if any.
13	Copy of complaints filed against employees working under the program
14	Findings in relation to investigation carried out by Multiplier
15	Meeting with EY team who is conducting this investigation from March 23
16	All the invoices raised, in addition to listed above, by Multiplier on Amazon from 2017 till date

Please let me know shall you need any clarification regarding this.

Best regards,
Devender

12. He also made reference to certain other missives in this regard, sent by way of electronic means which are on record as Annexure M to the petition to espouse the pre-existing dispute.



13. It is stare decisis that as and when there is dispute regarding the amount of claim by operational creditor, which exists prior to issuance of demand notice, the petition instituted for commencement of CIRP may not be admitted. At this stage it would not be out of context to refer to the definition of dispute given in Section 5 (6) of IBC, 2016, which includes the suit or arbitration proceedings relating to the existence of the amount of debt, quality of goods or service or a breach of representation or warranty. The Section 5 (6) of IBC, 2016 reads thus:-

“5. Definitions.

.....

(6) “dispute” includes a suit or arbitration proceedings relating to—

(a) the existence of the amount of debt;

(b) the quality of goods or service; or

(c) the breach of a representation or warranty;”

14. In **Mobilox Innovations Pvt. Ltd vs. Kirusa Software Pvt. Ltd.** (2018) 1 SCC 353, Hon’ble Supreme Court ruled that while looking at the dispute raised, it is not open to Adjudicating Authority to satisfy itself regarding the possibility of the success of the dispute and what it need to see is that there is an ex-facie dispute regarding the amount of demand. The para 38 and 51 of the Judgment reads thus:-

“38. It is, thus, clear that so far as an operational creditor is concerned, a demand notice of an unpaid operational debt or copy of an invoice demanding payment of the amount involved must be delivered in the prescribed form. The corporate debtor is then given a period of 10 days from the receipt of the demand notice or copy of the invoice to bring to the notice of the operational creditor the existence of a dispute, if any. We have also seen the notes on clauses annexed to the Insolvency and Bankruptcy Bill of 2015, in which “the existence of a dispute” alone is mentioned. Even otherwise, the word “and” occurring in Section 8(2)(a) must be read as “or” keeping in mind the legislative intent and the fact that an anomalous situation would arise if it is not read as “or”. If read as “and”, disputes would only stave off the bankruptcy process if they are already pending in a suit or arbitration proceedings and not otherwise. This would lead to great hardship; in that a dispute may arise a few days before triggering of the insolvency process, in which case,



though a dispute may exist, there is no time to approach either an Arbitral Tribunal or a court. Further, given the fact that long limitation periods are allowed, where disputes may arise and do not reach an Arbitral Tribunal or a court for up to three years, such persons would be outside the purview of Section 8(2) leading to bankruptcy proceedings commencing against them. Such an anomaly cannot possibly have been intended by the legislature nor has it so been intended. We have also seen that one of the objects of the Code qua operational debts is to ensure that the amount of such debts, which is usually smaller than that of financial debts, does not enable operational creditors to put the corporate debtor into the insolvency resolution process prematurely or initiate the process for extraneous considerations. It is for this reason that it is enough that a dispute exists between the parties.

X X X

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.”*

15. Also in **Rajratan Babulal Agarwal vs. Solartex India Pvt. Ltd. and Others** (2023) 1 SCC 115, it could be ruled by Hon’ble Supreme Court that a standard applied with reference to a case of pre-existing dispute under IBC cannot be equated with the principle of preponderance of probability which



usually guides the Civil Court at the stage of decreeing the suit. The Para 75 and 79 reads thus:-

“75. When we speak about evidence, we must not overlook the law laid down in Mobilox that the court need not be satisfied that the defence is likely to succeed. The standard, in other words, with reference to which a case of a pre-existing dispute under 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. Once this subtle distinction is not overlooked, we would think that NCLAT has clearly erred in finding that there was no dispute within the meaning of the IBC.

X X X

79. Here, we must not be oblivious to the limited nature of examination of the case of the corporate debtor projecting a pre-existing dispute. Overlooking the boundaries of the jurisdiction can cause a serious miscarriage of justice besides frustrating the object of the IBC. NCLAT, has clearly erred in not appreciating the issue, bearing in mind the principles in the Act.”

16. In the present case certainly regarding the invoices referred to by Mr. Neeraj Malhotra, Ld. Sr. Counsel appearing for the Petitioner, there is no specific and concrete dispute, but once the Petitioner itself could make complaints regarding certain invoices raised by its employees on Amazon Seller Services Pvt. Ltd., we find no callousness or infirmity in the stand taken by the corporate debtor that also the other invoices raised either on the corporate debtor or Amazon Seller Services Pvt. Ltd., (particularly when in terms of the novation agreement (supra) these were the rights/obligation/interest qua Amazon Seller Services Pvt. Ltd. which were transferred to the corporate debtor herein before us) needed to be examined. While observing so, we are not expressing any opinion on entitlement or the claim raised by the Petitioner on the corporate debtor. What we are trying to prosper is that there are reasons to dispute the bona fide of the claim of the petitioner which may not be determined by us. In view of the aforementioned, particularly the dispute raised by the corporate debtor regarding its liability to pay the amount demanded by the Operational Creditor and being bound by the aforementioned Judgment of the Hon'ble CP(IB)-757/ND/2023



Supreme Court (supra) we are unable to order commencement of CIRP qua the corporate debtor.

17. In the wake, **the petition is rejected. No cost.**

18. Before parting with, we make it clear that nothing observed/recorded herein above should be construed as finding on the claim of the petitioner and it would be open to it to work out the same in accordance with law.

Sd/-
(SUBRATA KUMAR DASH)
MEMBER (T)

Sd/-
(ASHOK KUMAR BHARDWAJ)
MEMBER (J)