



IN THE NATIONAL COMPANY LAW TRIBUNAL
BENGALURU BENCH, BENGALURU
[Through Physical hearing/VC Mode (Hybrid)]

ITEM No.05
C.P.(IB) No. 173/BB/2023

IN THE MATTER OF:

M/s. Wipro Ltd. ... Petitioner
Vs.
M/s. Avesthagen Ltd. ... Respondent

Order under Section 9 of IBC, 2016

Order delivered on: 28.04.2025

CORAM:

SH. SUNIL KUMAR AGGARWAL
HON'BLE MEMBER (JUDICIAL)

SH. RADHAKRISHNA SREEPADA
HON'BLE MEMBER (TECHNICAL)

PRESENT:

For the Petitioner : S R Kamlacharan
For the Respondent : Shri Nithya

ORDER

C.P.(IB)No.173/BB/2023 is admitted, vide separate order.

List the case on **23.06.2025**, for IRP/RP report.

-Sd-
RADHAKRISHNA SREEPADA
MEMBER (TECHNICAL)

-Sd-
SUNIL KUMAR AGGARWAL
MEMBER (JUDICIAL)

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IN THE NATIONAL COMPANY LAW TRIBUNAL
BENGALURU BENCH, BENGALURU
(Exercising powers of Adjudicating Authority under
The Insolvency and Bankruptcy Code, 2016)
(Through Physical hearing/VC Mode (Hybrid))

CP (IB) No.173/BB/2023

U/s. 9 of the IBC, 2016 r/w
Rule 6 of the IBC (AAA) Rules, 2016

IN THE MATTER OF:

WIPRO LIMITED

Doddakanahalli, Sarjapur Road
Bengaluru, Karnataka, 560035

.... Operational Creditor

Versus

AVESTHAGEN LIMITED

Yolee Grande, 29 floor,
No.14, Pottery road,
Richards Town, Frazer Town'
Bengaluru, Karnataka 560005

... Corporate Debtor

Order delivered on: 28.04.2025

CORAM: 1.Hon'ble Shri Sunil Kumar Aggarwal, Member (Judicial)
2. Hon'ble Shri Radhakrishna Sreepada, Member (Technical)

Last Date of hearing:03.04.2025

PRESENT:

For the Petitioner : Shri Kamalcharan. S.R

For the Respondent: None appeared

ORDER

1. The present Petition was filed on 25.10.2023 under section 9 of the Insolvency and Bankruptcy Code, 2016 ("IBC/Code"), r/w. Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules 2016, by **WIPRO LIMITED** ("Operational Creditor/Petitioner") inter alia seeking to initiate Corporate Insolvency Resolution Professional Process ("CIRP") against **AVESTHAGEN LIMITED** (hereinafter referred as "Corporate Debtor/Respondent") on the ground that the Corporate Debtor has



committed a default for an outstanding amount of Rs.2,38,15,350/- (Rupees Two Crore Thirty Eight Lakhs Fifteen Thousand Three Hundred and Fifty Only) and USD.1,578,132 (United States Dollars One Million Five Hundred and Seventy-Eight Thousand One Hundred and Thirty-Two Only).

2. The Date of Default as mentioned in the Part IV of Form 5 for an outstanding amount of Rs.2,38,15,350/- is 19.01.2023 and for an outstanding amount of USD.1,578,132 is 12.05.2023.
3. It is also submitted that Affidavit regarding there being no pre-existing Dispute U/s 9(3) (b) has been filed vide Diary No.314 dated 15.01.2024.
4. Relevant brief facts of the case are as follows:
 - a) The Operational Creditor and the Corporate Debtor had entered into a Service Agreement dated 22.11.2021 (hereinafter "Service Agreement") for undertaking research wherein it was mutually agreed between the parties that the Operational Creditor would provide certain services to the Corporate Debtor and the Corporate Debtor also committed to providing the samples as well as the necessary information, approvals, and resources required by the Operational Creditor to complete the services successfully. Further, it was agreed that Operational Creditor would perform services as specified under the Statement of Work-I ("SOW-I") dated 23.12.2021.
 - b) The preliminary SOW i.e., SOW-I was entered on 23.12.2021 for a period of one year ending 22.12.2022 and the same formed part and parcel of Service Agreement dated 22.11.2021. It is stated that as per SOW-I dated 23.12.2021; Operational Creditor was to render the service of 'Genomic Sequencing' and as per details specified in Clause 12 of SOW-I, it was mutually agreed that Operational Creditor would render the services from 23.12.2021 to 22.12.2022 for a fee of Rs.5,60,62,500/- (Rupees Five Crore Sixty Lakh Sixty-Two Thousand and Five Hundred



only) and the said amount ("SOW-I Fee") would be exclusive of sales-use, Service Tax and other taxes assessed, which would be payable at the appropriate rates over and above the SOW-I Fee.

- c) The Operational Creditor also submits that his scope of work was expanded vide Statement of Work ("SOW-II") dated 02.04.2022 which was entered into between the Parties, for the purpose of 'Cancer Risk Assessed by NGS profiling of Circulating free DNA and RNA for Lung Cancer Project related Genomics Sequencing Services'. It is further submitted that SOW-II and the amendment dated- 06.04.2022 encompassed Sequencing (150bp paired end) on NGS Sequencer and Sequencing data transfer to you. The aforesaid services were to be rendered at a fee of \$900/- (Nine Hundred US Dollars only), per sample, and was totally valued at USD.27,076,500/- (Twenty-Seven Million US Dollars only) and the said amount ("SOW-II Fee") would be exclusive of sales use, Service Tax and other taxes, which would be payable at the appropriate rates over and above the SOW-II Fee, which was payable as per the agreed time schedule.
- d) The Operational Creditor states that Clause 2 of the Service Agreement provided for the responsibilities to be fulfilled by Corporate Debtor to facilitate and enable the services to be rendered by Operational Creditor and amounts specified in the invoices raised by Operational Creditor shall be paid within 30 or 45 days (as the case may be) from the date of invoice failing which Operational Creditor is at liberty to charge interest at 1.50% per month for the delay. It was also agreed that invoices raised shall be deemed to be accepted if there is no written objection from the Corporate Debtor within 15 days from the date of the invoice.
- e) In Pursuance of the services rendered under SOW-I, the Operational Creditor raised invoices vide invoice No.**90125838** amounting to Rs.**48,51,275**, invoice No.**90166545** amounting to Rs.**79,38,450** and invoice No.**90237764** amounting to Rs.



1,58,76,900 on 30.07.2022, 21.09.2022 and 21.12.2022 respectively. Further, in pursuance of the services rendered under SOW-II, the Operational Creditor raised invoices vide invoice No.**5000094878** amounting to **USD.2,65,500**, invoice **No.90167516** amounting to **USD.1,77,354** and invoice No. **90237765** amounting to **USD.4,71,528** on 02.08.2022, 22.09.2022 and 21.12.2022 respectively.

- f) On 28.03.2023, amended statement of work was entered upon between Operational Creditor and the Corporate Debtor and according to which the Operational Creditor raised invoices vide invoice No. **90307163** amounting to **USD. 63,750**.
- g) Thereafter, the Corporate Debtor defaulted on payment as agreed between the parties due to which the Operational Creditor sent a Legal notice dated 14.06.2023 to the Corporate Debtor requesting for payment of the unpaid invoices No.**90166545** and **90237764** amounting to a total of Rs. **2,38,15,350** due under **SOW-I** and unpaid invoices No.**5000094878, 90167516, 90237765 and 90307163** amounting to a total of **USD.1,578,132** due under **SOW-II**. The Legal Notice dated 14.06.2023 sent by the Operational Creditor to the Corporate Debtor is at **Annexure – M** to the Petition. However, the Corporate Debtor did not reply to the Legal Notice dated 14.06.2023 sent by the Operational Creditor.
- h) Thereafter, since there was no reply tendered by the Corporate Debtor to the abovementioned Legal Notice, dated 14.06.2023; the Operational Creditor was forced to issue a statutory Demand Notice under Section 8 r/w Rule 5 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 in accordance with Form 3 on 08.08.2023 for recovery of unpaid debt to the registered office of the Corporate Debtor by post. The Corporate Debtor had received the said Demand Notice but did not reply to the said Demand notice sent by the Operational Creditor.



- i) The Operational Creditor submits that it has continuously rendered the specified services in a diligent manner. However, there was a lapse on the part of the Corporate Debtor to promptly pay the invoices amounts for the services rendered by Operational Creditor even after repeated requests for payment as per the agreement and therefore the Corporate Debtor is liable under Section 9 of the Insolvency and Bankruptcy Code, 2016.
5. On 09.08.2024, the Respondent filed its statement of objections, vide Diary No: 4743 and contended as under: -
- (a) That this Petition by the Operational Creditor is not maintainable as the Operational Creditor has misused the provisions of the IBC, 2016 to starve off the Corporate Debtor's claims against the Operational Creditor for financial loss and damages in a sum upwards of USD 2.6 million. It is further submitted that the Operational Creditor and the Corporate Debtor had agreed to set different timelines for the supply of all the requisite samples as agreed under the Service Agreement and the same is evident from the various emails exchanged between the Operational Creditor and the Corporate Debtor and the same is at **Annexure-A** of the Reply filed by the Respondent.
 - (b) The Operational Creditor has exhibited several deficiencies in their service such as delays in processing the data and furnishing the requisite reports which has led to material breach of the terms of the SOW -I and SOW -II by the Operational Creditor; even after being provided samples on time by the Respondent as required under SOW-I and SOW-II. Further, the incomplete data and the mishandling of these samples and data have led to significant financial loss, amounting to USD 2.6 million for the Corporate Debtor which has caused substantial damage to the Corporate Debtor's resources. Thus, due to significant deficiencies in the services provided by the Operational Creditor, it is unjustifiable for them to demand payment for the invoices raised as the amount



allegedly payable by the Corporate Debtor is disputed and the Corporate Debtor has a counter claim on the Operational Creditor.

- (c) Though the Operational Creditor has raised several invoices but some are fake as the Operational Creditor has raised some invoices for the services that were never performed, and the samples provided by the Corporate Debtor were never analysed. Further, a breakdown of the invoices raised and the dispute pertaining to the same in SOW-1 are tabulated below:-

S.NO	INVOICE NO.	DATE	AMOUNT (in Rs.)	STATUS OF INVOICE
1.	90125838	30.07.2022	48,51,275	Accepted and paid
2.	90166545	21.09.2022	79,38,450	Work was not completed in all aspects and data not submitted in the required format. Thus, Rs.79,38,450 is withheld by the Corporate Debtor, and the appropriate amount will be paid subject to pre-existing disputes relating to the said invoice between the parties being resolved.
3.	90237764	21.12.2022	1,58,76,900	Work was not completed in all aspects and data not submitted in the required format and the same is evident from an email communication dated 21.06.2023 regarding SOW-1, which indicates that the Operational Creditor has received a total of 325 samples of the 500 required for carrying out the sequencing from the Corporate Debtor. Further, 205 samples were processed by the Corporate, Debtor, and the data was delivered. A copy of the email communication dated 21.06.2023 is attached as Annexure- B.

It is further submitted that with regard to **SOW-II**, 243 cfDNA samples and 53 cfRNA samples were sent to the Operational Creditor for processing. However, the data for these samples was never analysed or sent back to the Corporate Debtor . The email communications between the Corporate Debtor and the



Operational Creditor dated 21.06.2023 at **Annexure-B** of the Petition makes it evident that the data was not analysed and the Corporate Debtor has been awaiting the data on the Samples of SOW-II. The Respondent further submits that the invoices on this SOW-II have been raised mindlessly and with malafide intentions. A breakdown of the invoices raised and the dispute pertaining to the same in SOW-2 is tabled below:

S.NO	INVOICE NO.	DATE	AMOUNT (in USD)	STATUS OF INVOICE
1.	5000094878	30.07.2022	48,51,275	Work not done and it's a Fake invoice
2.	90167516	21.09.2022	79,38,450	Work not done and it's a Fake invoice
3.	90237765	21.12.2022	4,71,528.	Work not done and it's a Fake invoice
4.	90307163	28/03/2023	63,750	Work not done and it's a Fake invoice

It is submitted that no work was done with regard to these invoices gets substantiated by the emails dated 15.05.2023 wherein the Representative of the Corporate Debtor has clearly mentioned that "Please note that we have offered to make these payments even without the samples being provided against these as of yet". The copy of the email dated 15.05.2023 is at **Annexure C** of the Objections. Therefore, it is important to note that these invoices were raised in the interest of their partnership and in good faith. However, the same is now being misused by the Operational Creditor to raise false claims against the Corporate Debtor. Therefore, the Corporate Debtor is not liable to pay the Operational Creditor any monies as per the invoices raised above. It is respectfully submitted that this forum is being misused and the appropriate forum is Arbitration to resolve these disputes. Therefore, since the services stipulated in the Agreement and SOWs were not completed by the Operational Creditor, it is unjustifiable to demand payment for them. The Corporate Debtor disputed the invoices raised, and the Operational Creditor is put to strict proof of demonstrating that the work was, in fact, done satisfactorily.



- (d) It is contended that the Operational Creditor, has issued fake invoices to the Corporate Debtor, without even testing the samples provided by the Corporate Debtor and the Operational Creditor has failed to deliver the agreed-upon services in a timely and complete manner, such as incomplete reports, mishandling of the Valuable samples leading to substantial financial losses for the Corporate Debtor. In such a situation, where the alleged Operational Creditor has not fulfilled their responsibilities as stipulated in the Agreement and SOWs, they cannot claim payment since it has led to breach of their contractual obligation. This also clearly establishes that there is a pre-existing dispute between the parties and therefore, this Tribunal lacks jurisdiction to adjudicate these pre-existing disputes at hand.
- (e) The Respondent submitted that the invoices raised by the Operational Creditor lack any supporting documentation or evidence to substantiate the validity of the work being done by them. The Operational Creditor has failed to share credible evidence for the services rendered as the Operational Creditor had not completed the work and has therefore failed to substantiate their claims with evidentiary documents and proof of completion of the work.
- (f) It is also submitted that as per the Service Agreement, a valid and enforceable Arbitration Clause exists between the Corporate Debtor and the Operational Creditor in the form of Clause 9(iv) of the Service Agreement which clearly states that in the event of any dispute arising out or relating to the Agreement, it shall first be attempted to be resolved by their respective project managers, failing which, the parties shall resolve the dispute through arbitration following the Rules of Indian Arbitration Association. It is further submitted that the Corporate Debtor has legal right to invoke arbitration and same is substantiated by citing the Judgement of Hon'ble Supreme Court in the case of ***Hindustan Petroleum Corporation Limited vs. Pink city Midway***



Petroleums (2003) (6) SCC 503 wherein the Hon'ble Supreme Court had held that where an arbitration clause exists, the court has a mandatory duty to refer dispute arising between the contracting parties to arbitrator. Similarly, in the case of ***P Anand Gajapathi Raju & others v PVG Raju (dead). & others, (2000) (4) SCC 539***, it was held that the language of section 8 of the Arbitration & Conciliation Act, 1996, is peremptory. Therefore, in the light of abovementioned facts, the Respondent submits that since the Service Agreement comprises of a dispute resolution Clause by way of Arbitration, the Operational Creditor ought to have considered that before approaching this Hon'ble Tribunal.

- (g) The Respondent submitted that the Operational Creditor has raised invoices for work that was incomplete or not done at all in the first place, which is a fact that has been wilfully hidden from this Hon'ble Tribunal by the Operational Creditor. Further, it is a settled principle of law that any claimant must make full and correct disclosures of all the material/important facts which have bearing on the adjudication of the issues raised in the case. In the present case, since the Operational Creditor has suppressed multiple material disclosures, and has not approached this Tribunal with clean hands, the petition is liable to dismissed on this ground.
- (h) In light of the above, the respondent prays for dismissal of the petition as not maintainable, being barred by existence of fake invoices and involving a pre-existing dispute.
6. The Petitioner filed rejoinder contending as under:
- (a) **Operational Creditor has not exhibited any deficiencies in service** – The Contentions of the Corporate Debtor that there were notable delays by the Operational Creditor in processing the data and furnishing the requisite reports, material breach of the terms of SOWs by the Operational Creditor. Loss of highly valuable



cfDNA, cfRNA and DNA samples of the rare Parsi-Zoroastrian Community; loss amounting to USD 2.6 million borne by the Corporate Debtor is blatant and without quantification and justification is also false and denied. The Operational Creditor has performed its part of the contract, processed data and kept reports ready, but had not released them simply because the Corporate Debtor failed to make long due payments. Further, these averments are being made for the first time in these proceedings and were not made even after receipt of the statutory notice prior to initiation of these proceedings. Therefore, it is obvious that the defence set up herein, is a false one and patently an afterthought as no material has been placed on record to prove any alleged loss to the Corporate Debtor on this account.

- (b) **Contention that no work has been done by the Operational Creditor is incorrect** – According to the Operational Creditor the work was done with regard to invoices is substantiated by the emails dated 15.05.2023 which are at **Annexure –C** to the Objections wherein the Corporate Debtor has clearly accepted and agreed to make payments but no payments were made to the Operational Creditor. Subsequently, the Corporate Debtor has sent an email dated 30.05.2023 which is at **Annexure-R**, seeking to settle the dues to the Operational Creditor. Therefore, having accepted the invoices; agreeing to pay for them and also seeking opportunities to settle the matter, the Corporate Debtor cannot now be permitted to raise baseless allegations without sufficient proof.
- (c) **Issue of fake invoices** - The Contention of the Corporate Debtor that the Operational Creditor has issued fake invoices to the Corporate Debtor even without testing the samples provided by alleged Corporate Debtor in order to inflate its revenue and thereby its income is wholly false, baseless and hereby denied. If the Contentions made by the Corporate Debtor ought to be true, then the Corporate Debtor would have denied the acceptance of



the reports and their liability to pay the invoices rose. It is only after the initiation of these proceedings, that the Corporate Debtor is raising such frivolous allegations to evade the liability under the Code and no credence ought to be given to them since the Operational Creditor has not caused delays, or provided incomplete reports or mishandled valuable samples as alleged by the Corporate Debtor.

- (d) **There is no pre-existing dispute between the parties.**- The Operational Creditor submits that Corporate Debtor raised the existence of Pre-existing disputes for the first time and same was not even raised after receipt of the statutory notice prior to initiation of these proceedings, is reiterated that it is for the first time that the Corporate Debtor is raising such frivolous claims merely to distract the attention of this Hon'ble Tribunal and evade the consequences under the Code and there exists no Pre- Existing Disputes.
- (e) **Arbitration Clause does not stall the Jurisdiction of NCLT** – The Petitioner states that an Arbitration Clause in an agreement does not set aside the Jurisdiction of NCLT since it is well established principle of law, that the provisions of the Code overrides other laws as held by Hon'ble Supreme Court in ***Tata Consultancy Services Limited v. SK Wheels Private Limited Resolution Professional, Vishal Ghisulal Jain, (2022) 2 SCC 583*** wherein Hon'ble Supreme Court has held that in terms of Section 238 of the IBC, 2016 and the law laid down by the Apex Court, the existence of a clause for referring the dispute between parties to arbitration does not oust the jurisdiction of NCLT to exercise its residuary powers under Section 60 (5) (c) of the Code to adjudicate disputes relating to the insolvency of Corporate Debtor. Further, a three-Judge Bench of the Hon'ble Supreme Court, in ***Indus Biotech (P) Ltd vs. Kotak India Venture (Offshore) Fund, (2021) 6 SCC 436*** had held that Section 238 of the Code overrides all other laws. The Hon'ble Supreme Court



was considering whether a reference to arbitration made under Section 8 of the Arbitration and Conciliation Act, 1996 in terms of the agreement between the parties would affect the jurisdiction of the NCLT to examine an application filed under Section 7 of the Code. The Hon'ble Supreme Court had observed as under:-

"As noted, the issue which is posed for our consideration is arising in a petition filed under Section 7 of IB Code, before it is admitted and therefore not yet an action in rem. In such application, the course to be adopted by the adjudicating authority if an application under Section 8 of the 1996 Act is filed seeking reference to arbitration is what requires consideration. The position of law that the IB Code shall override all other laws as provided under Section 238 of the IB Code needs no elaboration. In that view, notwithstanding the fact that the alleged corporate debtor filed an application under Section 8 of the 1996 Act, the independent consideration of the same dehors the application filed under Section 7 of IB Code and materials produced therewith will not arise. The adjudicating authority is duty-bound to advert to the material available before him as made available along with the application under Section 7 of IB Code by the financial creditor to indicate default along with the version of corporate debtor. This is for the reason that, keeping in perspective the scope of the proceedings under the IB Code and there being a timeline for the consideration to be made by the adjudicating authority, the process cannot be defeated by a corporate debtor by raising moonshine defence only to delay the process. In that view, even if an application under Section 8 of the 1996 Act is filed, the adjudicating authority has a duty to advert to contentions put forth on the application filed under Section 7 of IB Code, examine the material placed before it by the financial creditor and record a satisfaction as to whether there is default or not. While doing so the contention put forth by corporate debtor shall also be noted to determine as to whether there is substance in the defence and to arrive at the conclusion whether there is default. If the irresistible conclusion by the adjudicating authority is that there is default and the debt is payable, the bogey of arbitration to delay the process would not arise despite the position that the agreement between the parties indisputably contains an arbitration clause."

- (f) **Operational Creditor has not abused the process of Law-** The Contention of the Corporate Debtor that the Operational Creditor has not approached the Hon'ble Tribunal with clean hands is termed to be baseless and wholly denied. All material facts and documents pertaining to the relief sought by the Operational Creditor have been disclosed which is further substantiated by the vide email dated 30.05.2023 wherein the Corporate Debtor has duly accepted that payment is due from it towards the services rendered by the Operational Creditor and the relevant extract of the email dated 30.05.2023 which is at **Annexure R** of the Petition and is mentioned below:-



"We understand that there are outstanding payments associated with the delivery of 200 and 444 samples, totalling 644 samples amounting to 265,500 and 471,528 USD based on the presupposed invoices sent by WIPRO. We kindly request your understanding and patience until September 30, 2023 to settle these payments. We have multiple deals in the works and as soon as one is closed we will make the payout. We hope it happens sooner. I am afraid this is the best we can do".

Therefore, from the abovementioned extract of email dated 30.05.2023, it can be concluded that the Corporate Debtor has accepted that they are liable to pay the outstanding payment towards the service rendered by the Operational Creditor and therefore It is not apt to observe that there is any abuse of process of law in invoking jurisdiction of this Adjudicating Authority.

7. We have heard the Learned Counsels for parties and carefully perused the record
8. This Petition was filed on 25.10.2023 and the date of Default mentioned in Form No. 5 is 19.01.2023 and since this Petition has been filed on 25.10.2023, therefore, it is within the period of Limitation.
9. The Petitioner and the Respondent had entered into Service Agreement dated 22.11.2021 for undertaking research wherein it was mutually agreed between the parties that the Operational Creditor would provide certain services as stated under the Statement of Work-I ("SOW-I") dated 23.12.2021 and Statement of Work ("SOW-II") dated 02.04.2022. The Petitioner herein has raised invoices under SOW-I and SOW-II. The main argument of the Respondent is that invoice No.**90166545** dated 21.09.2022 amounting to Rs.**79,38,450** and invoice No.**90237764** amounting to Rs. **1,58,76,900** dated 21.12.2022 respectively are disputed because work has not been completed by the Operational Creditor under SOW-I and all invoices under SOW-II amounting to USD. 1,578,132 is disputed because it is a fake invoice and therefore constitutes a pre-existing dispute as per Section 8 of the IBC, 2016.



10. For the purpose of existence of Pre-existing Dispute, the Corporate Debtor herein has relied on facts that there has been deficiency in Service on part of Operational Creditor, Operational Creditor has raised invoices for work that has not been done.
11. We have thoughtfully considered the contentions raised by the Corporate Debtor with regard to existence of a Pre-existing dispute between the parties due to reasons such as deficiency in Service on the part of Operational Creditor, fake invoices, no evidentiary document have been provided in support of the having raised any claims or resorted to alternative remedy of Arbitration. There was absolute silence when two legal notices were served on the Corporate Debtor propelling thus Authority to perceive that the Corporate Debtor has failed to make out a case of pre-existing dispute.
12. In this regard, it is worth mentioning that at no point of time after demand notice was sent to the Corporate Debtor; the Corporate Debtor had questioned the quality of service provided or the authenticity of invoices raised by the Operational Creditor. It was only after this Petition was filed the Corporate Debtor has raised this defence for the first time which seems to be an afterthought.
13. In this regard reliance is placed on the judgment of Hon'ble Supreme Court in the case of ***Mobilox Innovations Pvt Ltd v. Kirusa Software Pvt Ltd (2017) ibclaw.in 01 SC, dated 21/09/2017***

*"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 Supplied)

14. As discussed above, this Authority needs to only see if there is a genuine dispute existing between the parties. However, the material on record does not prove the existence of any pre-existing dispute. Further the Hon'ble NCLAT, in the case of ***Deepak Modi Vs. Shalfeyo Industries Pvt. Ltd, (2023) ibclaw.in 215 NCLAT*** in Para 13 has held the following

"It is true that under the provisions of Code if Adjudicating Authority is satisfied with pre-existing dispute at the time of entertaining an application filed under Section 9 of the Code there is no reason to initiate the same or admit the application. However, law is settled on the point that there must be pure pre-existing dispute. Meaning thereby that genuine pre-existing dispute must exist in rejecting an application Section 9 of the Code".

15. In view of the abovementioned judgements, it is important to note for this Authority to consider that there must be a genuine pre-existing dispute for this Tribunal to reject an application under Section 9 of the Code. However, this Tribunal is of the considered view that the Corporate Debtor has failed to make out a case of pre-existing dispute.
16. In so far as the argument of the Corporate Debtor regarding the Operational Creditor should first exhaust the remedy of arbitration by stating that this Tribunal is being misused and the appropriate forum is to resolve these disputes is Arbitration is concerned, reliance is placed on the judgement of Hon'ble NCLAT in ***Hasan Shafiq v. CT Technologies, (2022) SCC OnLine NCLAT 2022*** wherein the Hon'ble NCLAT has held that, despite the presence of an arbitration clause in the agreement between the parties, an application under Section 9 of the IBC is fully maintainable and the existence of an arbitration clause does not bar the Operational Creditor from filing a Section 9 application. It also held that the right of an Operational Creditor to file a Section 9 application is not hindered by any arbitration agreement in the contract. If the Operational Creditor chooses to proceed under Section 9, the application cannot be dismissed solely based on the arbitration



clause in the underlying agreement. Further, the Hon'ble NCLAT in ***Mitcon Consultancy & Engineering Services Ltd. v. Vitthal Corporation Ltd., 2018 SCC OnLine NCLAT 928*** has held that the mere presence of an arbitration clause in an agreement does not, by itself, establishes the existence of a dispute. It held that the existence of an arbitration clause cannot be relied upon to argue that a dispute was already in existence prior to the initiation of insolvency proceedings.

17. From the above discussion, it becomes amply clear that the Petitioner has been able to establish the existence of operational debt and its default having been committed by the Corporate Debtor and further that there is no pre-existing dispute between the parties. Therefore, in our considered view, it is a fit case for admission u/s 9 of the Insolvency and Bankruptcy Code, 2016.
18. Accordingly, this adjudicating authority hereby **admits** the Company Petition bearing **CP (IB) No. 173/BB/2023** against the Corporate Debtor- **AVESTHAGEN LIMITED** and consequently moratorium is declared in terms of Section 14 of the Code imposing following prohibitions to be complied with by all concerned:
 - a. The institution of suits or continuation of pending suits or proceedings against the Corporate Debtor including execution of any judgment, decree or order in any court of law, tribunal, arbitration panel or other authority;
 - b. Transferring, encumbering, alienating or disposing of by the Corporate Debtor any of its assets or any legal right or beneficial interest therein;
 - c. Any action to foreclose, recover or enforce any security interest created by the Corporate Debtor in respect of its property including any action under the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002;



- d. The recovery of any property by an owner or lessor, where such property is occupied by or in the possession of the Corporate Debtor;
19. It is further directed that the supply of essential goods or services to the Corporate Debtor as may be specified, shall not be terminated or suspended or interrupted during the moratorium period.
 20. The provisions of Section 14(3) shall however, not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator and to a surety in a contract of guarantee to a Corporate Debtor.
 21. The order of ***moratorium shall have effect from the date of this order till completion of the Corporate Insolvency Resolution Process or until this Bench approves the Resolution Plan*** under sub-section (1) of Section 31 or passed an order for liquidation of Corporate Debtor under Section 33 of the IBC as the case may be especially under Sections 15, 17, 18, 20 and 21 of IBC, 2016.
 22. In Part-III of Form No.5, no name of the Interim Resolution Professional has been proposed. Subsequently however the Operational Creditor has proposed the name of Mr. Ravi Sankar Devarakonda as the Interim Resolution Professional (IRP) of the Corporate Debtor and Form No.2 and affidavit dated 09.04.2025 regarding the same has been filed. Based on this, the bench appoints **Mr. Ravi Sankar Devarakonda** with Registration Number.:-**IBBI/IPA-001/IP-P00095/2017-2018/10195**, having registered address at 41/1, 2nd Floor, 8th Main, 11th Cross, Jayanagar 2nd Block ,Bangalore, Karnataka ,560011, e-mail: **ravicacsmallb@gmail.com**, and Contact No.- 9844102554 as Interim Resolution Professional of the Corporate Debtor to carry out the functions as mentioned under the IBC. The fee payable to IRP/RP shall be in accordance with the IBBI Regulations/Circulars/Directions issued in this regard. The IRP is directed to take the steps as



mandated under the IBC, specially under Sections 15, 17, 18, 20 and 21 of IBC, 2016.

23. The Operational Creditor shall deposit a sum of Rs 2,00,000/- (Rupees Two Lakhs Only) with the IRP to meet the expenses arising out of issuing public notice and inviting claims. These expenses are subject to approval by the Committee of Creditors.
24. The Interim Resolution Professional shall after collation of all the claims received against **AVESTHAGEN LIMITED** and the determination of the financial position of the Corporate Debtor constitute a Committee of Creditors and shall file a report, certifying constitution of the Committee to this Tribunal on or before the expiry of thirty days from the date of his appointment, and shall convene first meeting of the Committee within seven days for filing the report of Constitution of the Committee. The Interim Resolution Professional is further ***directed to send monthly progress reports*** to this Authority.
25. A copy of the order shall be communicated to both the parties. The learned Counsel for the Petitioner shall deliver copy of this order to the Interim Resolution Professional forthwith. The Registry is also directed to send the copy of this order to the Interim Resolution Professional at his e-mail address forthwith.

-Sd/-

**(RADHAKRISHNA SREEPADA)
MEMBER (TECHNICAL)**

-Sd/-

**(SUNIL KUMAR AGGARWAL)
MEMBER (JUDICIAL)**