

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

**Company Appeal (AT) (Insolvency) No. 157 of 2023**

**[Arising out of the Impugned Order dated 16.12.2022 passed by the  
Adjudicating Authority, National Company Law Tribunal, New Delhi  
Bench-II in CP (IB) No. 792 (ND)/2021]**

**In the matter of:**

**Chemical Suppliers India Private Limited**

(CIN: U24299DL1997PTC090695)

507 Plot No-D-4,5,6 5<sup>th</sup> Floor Krishna Apra Business,  
Square N.S.P Pitampura, Delhi-110034

Email ID: chemicalpeople@gmail.com

...Appellant

**Versus**

**GLS Films Industries Private Limited**

(CIN:U74950DL2003PTC120112)

8/106, 3<sup>rd</sup> Floor, East Guru Angad Nagar  
Near Gurudwara, Laxmi Nagar,  
Delhi-1100092

Email: cscompliance@glsind.com

...Respondent

**Present:**

**For Appellant** : Mr. Krishnendu Dutta, Sr. Advocate with Mr. Nikhil Kumar, Mr. Kapil Sharma and Ms. Mahak Agarwal, Advocates.

**For Respondent** : Mr. Virendra Ganda Sr. Advocate with Mr. Ashraf Belal and Mr. Vishal Ganda, Advocates.

**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 16.12.2022 (hereinafter referred to as '**Impugned Order**') passed by the

Adjudicating Authority (National Company Law Tribunal, New Delhi Bench-II) in CP (IB) No. 792 (ND)/2021. By the impugned order, the Adjudicating Authority has dismissed the Section 9 application filed by the Operational Creditor-Appellant for initiation of Corporate Insolvency Resolution Process (**“CIRP”** in short) of the Corporate Debtor-Respondent. Aggrieved by the impugned order, the Appellant has come up with the present appeal.

**2.** We have heard Shri Krishnendu Datta, Ld. Sr. Advocate for the Appellant and Shri Virendra Ganda, Ld. Sr. Advocate, representing the Respondent.

**3.** Giving a brief factual overview of the present matter at hand, Shri Krishnendu Datta, Ld. Sr. Advocate for Appellant submitted that M/s Chemical Suppliers India Ltd-Operational Creditor is in the business of supplying chemical products and had entered into a business arrangement with M/s GLS Films Industries Pvt. Ltd.-Corporate Debtor for supply of chemicals. Goods were supplied by the Appellant-Operational Creditor from time to time and invoices were raised. The Operational Creditor had sent eight invoices dated 27.03.2021 to 26.07.2021 amounting Rs 1,72,04,137/- to the Corporate Debtor for goods received by them. Since the Corporate Debtor had defaulted in making payment of invoices within 60 days from the date of delivery, the Appellant had charged interest @24% p.a. as per invoice conditions which amounted to Rs 1,20,89,086/-. Since payments were not forthcoming, the Appellant issued a Section 8 Demand Notice on 12.11.2021 demanding a payment of Rs 2,92,93,223/- which included both principal and interest amounts. Since the Respondent-Corporate Debtor failed to pay the above outstanding amount of Rs

2.92 Cr., the Appellant filed a Section 9 petition on 21.12.2021 to initiate CIRP against the Corporate Debtor for committing a default of Rs 2.92 Cr.

**4.** Contending that all the ingredients necessary for filing a Section 9 application stood fulfilled in that there was an undisputed operational debt above the threshold limit due to the Appellant and established default on the part of the Corporate Debtor, the Adjudicating Authority had however wrongly dismissed the Section 9 application on the ground of pre-existing disputes when there were none. On the pre-existing disputes raised by the Corporate Debtor the Adjudicating Authority had erroneously relied on the fact that the Corporate Debtor had issued a debit note on 31.12.2021 which debit note was inconsequential and irrelevant being subsequent to the filing of Section 9 petition. This debit note does not merit to be treated as pre-existing disputes as these related to defective goods with respect to invoices dated 09.04.2021 and 10.04.2021 which were being raised for the first time after Section 8 Demand Notice. These disputes had never been raised by the Corporate Debtor either at the time of receipt of the goods or within seven days from delivery of goods as per terms and conditions specified in the invoice. This dispute was therefore raised as an afterthought. Also, the police complaint which has been taken cognisance of by the Adjudicating Authority is misplaced since the dispute raised in the said complaint had already been settled by correcting the credit note in the ledger account and could not have been treated as a pre-existing dispute. The foundational basis of the police complaint being non-existent, this was a frivolous and redundant defence. Above all, when the Respondent in their own ledger account had by themselves acknowledged their liability to pay the

Operational Creditor the principal amount of Rs 1.72 Cr as on 16.08.2021, subsistence of any pre-existing dispute lacks foundation. In support of their contention, reliance has been placed on the judgment of this Tribunal in ***Surendra Sancheti vs Gospel Digital Technologies Co. Ltd. in CA(AT)(Ins) No.583 of 2024*** wherein it has been held that once debt confirmation is made by the Corporate Debtor under invoices submitted by the Operational Creditor, it tantamount to valid and proper admission of debt and default in the eyes of law.

**5.** Refuting the contentions made by the Appellant, Shri Virendra Ganda, Ld. Sr. Counsel of the Respondent submitted emphatically that the Adjudicating Authority had rightly rejected the Section 9 application on coming to the conclusion that there was a pre-existing dispute between the parties. It was submitted that the Operational Creditor had supplied two consignments of chemical solvents on 09.04.2021 and 10.04.2021 which were not of the requisite quality and standards which in turn led to defective printing of plastic films causing huge loss to the Corporate Debtor. Even the subsequent batch of goods delivered on 21.06.2021 continued to remain defective and hence returned to the Operational Creditor. It was also submitted that sample of the material was sent to a third-party lab by the Respondent which carried out due tests and reported suspended particles in the solvent supply by the Operational Creditor. That the Operational Creditor had themselves issued credit notes for the defective goods delivered on 21.06.2021 clearly evidences disputed transactions between the two parties. After taking into account the defective material supplied and the losses sustained amounting Rs 2,42,11,648/-, they had issued a debit

note to the Operational Creditor on 31.12.2021 following which the Corporate Debtor was liable to pay only an amount of Rs 70,09,430/- to the Operational Creditor which is clearly below the threshold level of Rs 1 cr and hence did not attract provisions contained in Section 9 of IBC. It was also contended that the Operational Creditor was inflating the dues by adding interest amount at a time when interest was not ever charged earlier. It was further contended that the Operational Creditor was requested by the Corporate Debtor to compensate them for the losses caused to them and were invited for a meeting to settle the accounts. However, the Operational Creditor instead of settling the accounts started demanding for payment including interest aggregating Rs 4.60 Cr. The malafide of the Operational Creditor is also evident from the fact that while demanding outstanding payment, they did not factorise the need to provide credit note to the tune of Rs 1.66 Cr. for supply of defective goods. It was further asserted that the original credit note had still not been received by them. The Appellant besides sending notices demanding wrongful amounts as outstanding also threatened to commit suicide attributing responsibility for the same on the Corporate Debtor and its officials. This led to a police complaint being filed against the Operational Creditor on 27.09.2021 which was prior to the Section 8 Demand Notice and clearly constituted to be a pre-existing dispute.

**6.** It was also pointed out that the Respondent had filed Civil Suit No. 37 of 2022 in the Commercial Court which is pending adjudication and that during the cross examination of the Managing Director of the Appellant-Operational Creditor in the said suit, the pre-existing dispute has been corroborated. The related documents have been placed by way of an additional affidavit which show

that the Appellant did not follow the standard operating procedure for delivery of the chemicals and had not submitted report on the authenticity and purity of the chemicals supplied. It was strongly contended that all such issues ranging from damages caused to the Respondent due to supply of contaminated material and quantum of debt etc are triable issues which are already pending adjudication before the Civil Court which amounts to a pre-existing dispute. The Ld. Counsel for the Respondent also asserted that an Operational Creditor can justifiably seek initiation of CIRP only where no real dispute exists between parties and the provisions of IBC cannot be turned into a debt recovery proceeding to jeopardise the functioning of a solvent and healthy Corporate Debtor.

**7.** We have duly considered the arguments advanced by the Learned Sr. Counsels for both the parties and perused the records carefully.

**8.** Before we come to our analysis and findings, we would like to bear in mind the guiding principles laid down by the Hon'ble Supreme Court in ***Mobilox Innovations Pvt. Ltd. Vs. Kirusa Software Private Limited (2018) in C.A.***

**No.9405 of 2017** and the relevant paras are extracted as hereunder:

*“33.....What is important is that the existence of the dispute and/or the suit or arbitration proceeding must be pre-existing i.e. it must exist before the receipt of the demand notice or invoice, as the case maybe.....”*

*“34. Therefore, the adjudicating authority, when examining an application under Section 9 of the Act will have to determine:*

*(i) Whether there is an “operational debt” as defined exceeding Rs. 1 lakh?  
(See Section 4 of the Act)*

*(ii) Whether the documentary evidence furnished with the application shows that the aforesaid debt is due and payable and has not yet been paid? and*

*(iii) Whether there is existence of a dispute between the parties or the record of the pendency of a suit or arbitration proceeding filed before the receipt of the demand notice of the unpaid operational debt in relation to such dispute? If any of the aforesaid conditions is lacking, the application would have to be rejected. Apart from the above, the adjudicating authority must follow the mandate of Section 9, as outlined above, and in particular the mandate of Section 9(5) of the Act, and admit or reject the application, as the case may be, depending upon the factors mentioned in Section 9(5) of the Act.”*

*“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.”*

*“56. Going by the aforesaid test of “existence of a dispute”, it is clear that without going into the merits of the dispute, the appellant has raised a plausible contention requiring further investigation which is not a patently feeble legal argument or an assertion of facts unsupported by evidence. The defense is not spurious, mere bluster, plainly frivolous or vexatious. A dispute does truly exist in fact between the parties, which may or may not ultimately succeed, and the Appellate Tribunal was wholly incorrect in characterizing the defense as vague, got-up and motivated to evade liability.”*

**9.** Coming to the statutory scheme as contained in Sections 8 and 9 of the IBC, we notice that Section 8 requires the Operational Creditor, on occurrence of a default by the Corporate Debtor, to deliver a Demand Notice in respect of

the outstanding Operational Debt. Section 8(2) lays down that the Corporate Debtor within a period of 10 days of the receipt of the Demand Notice would have to bring to the notice of the Operational Creditor of the existence of dispute, if any. Section 9(1) of IBC further provides that if the Operational Creditor does not receive payment from the Corporate Debtor or notice of the dispute under Section 8(2), he may file an application under Section 9(1) of the IBC. However, Section 9(5)(ii) envisages that if a notice of dispute is received by the Operational Creditor or there is a record of dispute in the Information Utility, the application is liable to be rejected by the Adjudicating Authority.

**10.** Given this background of relevant statutory construct of IBC and the legal precepts laid down by the ***Mobilox judgment*** supra, we now proceed to see from the facts of the present case whether the Adjudicating Authority was justified in dismissing the Section 9 application on the ground that the operational debt claimed by the Appellant was embroiled in pre-existing disputes.

**11.** We would first like to whether there was a debt and default on the part of the Corporate Debtor qua the Operational Creditor. It is the case of the Appellant that the Corporate Debtor through its own ledger account as placed at 146 of Appeal Paper Book (“**APB**” in short) had acknowledged liability for the principal amount of Rs 1.72 Cr. as of 16.08.2021 qua the Appellant. It is also canvassed that when the Respondent has acknowledged the liability for the principal amount of Rs 1.72 Cr as evidenced from their ledger account, in such circumstances subsistence of any pre-existing dispute with regard to outstanding operational debt above the threshold lacks foundation. Per contra, we notice that the Corporate Debtor has claimed in their reply to the Section 9



petition that it had issued a debit note dated 31.12.2021 for Rs 2.42 cr. as placed at page 173 of APB and that if this amount is adjusted against the amount claimed by the Appellant, it is the Appellant who was liable to pay them Rs 70 lakhs. It was also submitted that a legal notice was sent to the Appellant on 13.01.2022 for payment of Rs. 70 lakhs.

**12.** We have perused the records carefully and find that e-way bills placed on record from pages 52-59 of the APB and related invoices clearly show that goods against these invoices had been delivered by the Operational Creditor to the Corporate Debtor. The invoice amounts for the goods supplied as placed at pages 44-51 of APB also stood reflected in the ledger accounts of the Corporate Debtor as maintained by the Appellant. Further, in the calculations in a tabular chart submitted by the Respondent in their Reply before this Tribunal at page 11, we find that there is no denial by them with respect to the amount claimed by the Appellant of Rs 1.72 Cr. Thus, by their own computation, the Corporate Debtor had themselves admitted and acknowledged their liability of Rs 1.72 Cr which represented the principal outstanding amount. Their computation in the said tabular chart however does not reflect the interest amount claimed by the Appellant as per the terms and conditions mentioned on the invoices. As per these terms and conditions, the Corporate Debtor was required to pay interest @24% p.a. in the event of delay on the payment of invoice amount beyond prescribed number of days. Basis this calculation, the interest amount of Rs 1,20,89,086/- for delay in payment was claimed by the Appellant. It is the case of the Appellant that since an aggregate amount of Rs 2.92 Cr. including principal and interest remains unpaid, default also stands established.

Furthermore on 01.07.2021 credit was given for Rs 35.59 lakhs by way of credit note and a sale discount by journal entry of Rs 1.66 Cr was given on 31.07.2021 as placed at page 68 of APB. We notice that while the credit note of Rs 35.59 lakhs has been reflected by the Respondent in their computation, the credit note of Rs 1.66 Cr has been omitted. While the Corporate Debtor has claimed loss of Rs. 2.42 cr and claimed adjustment thereto, nothing has been placed on record to show that the disputes regarding quality of goods in respect of invoices dated 09.04.2021 and 10.04.2021 amounting to Rs. 2.42 cr had been raised by them within the stipulated time. Material on record clearly shows that the debit note was clearly raised subsequent to filing of Section 9 application and was non-existent at the time of filing of the Section 8 demand Notice. Even the reply to the Section 8 Demand Notice which we have reproduced in the succeeding paragraph 21 below is silent about this debit note.

**13.** Clearly therefore the amount of Rs. 2.92 cr had crystallised as operational debt well before the issue of the debit notes and the legal notice of 13.01.2022 and only this amount of Rs. 2.92 cr has been the basis of the Section 8 Demand Notice. The Corporate Debtor's reply to Section 8 demand notice is bereft of details on how these debts have been discharged. No material has been placed on record by Corporate Debtor to show that they had categorically rejected the outstanding dues but for raising issues like Appellant not attending meetings for reconciliation of accounts. Prima-facie, there is no clinching evidence placed on record by the Corporate Debtor that they had unambiguously and outrightly denied their liability to pay.

**14.** It is the case of the Appellant that the Adjudicating Authority has wrongly rejected their Section 9 application by relying on certain frivolous disputes on the disputes raised by the Corporate Debtor.

**15.** At this stage, it may be useful to take note of the findings of the Adjudicating Authority while dismissing the Section 9 application filed by the Appellant which is as extracted hereunder:

*“13. Thus, from the series of the letters/e-mails/WhatsApp messages exchanged between the parties, as placed on record and the claims and counter-claims raised by the parties, we find that there is a plausible contention/dispute raised by the respondent prior to issue of the demand notice, which is not disclosed by the Applicant upfront in its application and which is yet to be settled conclusively and further, the applicant has approached this Adjudicating Authority for recovery of its alleged dues, which is not the objective of IBC.*

*14. In view of the above discussion, this Bench is of the considered view that there exists a dispute between the parties prior to the issue of the demand notice, which necessitates a detailed investigation of documents and adducing of evidence from the all concerned, which is beyond the scope of the summary jurisdiction of this Adjudicating Authority.”*

It is clear from a plain reading of paragraphs 13 and 14 above of the impugned order that the Adjudicating Authority came to the conclusion that there was pre-existing dispute between the two parties warranting further investigation which was beyond the remit and scope of the summary jurisdiction of this Adjudicating Authority and hence dismissed the Section 9 application.

**16.** We now proceed to examine the various pre-existing disputes which have been raised by the Respondent. One of the principal grounds for dismissal of the Section 9 petition by the Adjudicating Authority is an e-mail dated 16.10.2021 complaining about the defective materials supplied by the Operational Creditor.

Though this letter has been noticed at paragraph 9 of the impugned order, at the cost of repetition, we wish to reproduce the same as hereunder:

*From: Sachin (mailto:sachin@glsmail.com)*

*Sent; 16 October 2021 15:39*

*To; Chemical Supplier India (P) Limited*

*Cc: rajesh@glsfirms.com;sandeepglsfirms.com; 'Jitendra Sharma'; 'Purchase'; 'HB Kala'; Rajesh BHaiya BKS; 'Raj Solvent Pvt. Ltd.'; Sandeep Sharma; 'SAURAV ROHATGI'; 'Arvind accounts'; 'Sand chem India ltd'; 'Krishna'; 'sandeep singh'*

*Subject: RE: Require statement of account from both GLS & YANSEFU*

*Dear Mr. Ankur Aggarwal,*

*With reference to your mails till date, please refer to our letter dated 10.12.2020 wherein we have complained about the poor quality of Chemicals which were supplied by you and received by us during the period-16.09.2020 to 24.10.2020. This has led to material rejection and consequent losses.*

*You have been repeatedly asked to come to check the status and reconcile the accounts, but you have failed to comply to the same.*

*Your actions of making false accounts and demanding money through illegal threats have put us under tremendous stress and mental agony.*

*You are, therefore, called upon to reconcile the accounts and appropriate the losses occurred due to defective materials.*

*Hope you shall comply at the earliest.*

*Sachin Rao"*

**17.** We notice from the contents of the above letter of 16.10.2021 that the Corporate Debtor had made mention therein of their letter of 10.12.2020 complaining about the defective materials supplied by the Operational Creditor and consequent losses suffered by them. The dispute raised in the email of 16.10.2021 by the Corporate Debtor was clearly premised on their earlier letter dated 10.12.2020. Since both these correspondences pre-date the Section 8

Demand Notice, we therefore need to see whether this constituted pre-existing dispute.

**18.** When we look at the material on record, we find that the Appellant has admitted that the Corporate Debtor had sent a letter dated 10.12.2020 to them in which a complaint had been made that the solvents supplied by them from September 2020 to October 2020 contained “impurities” and that it carried “stringent smell”. It is the case of the Respondent that they had sent this letter of dispute on 10.12.2020 which was much before the issue of Section 8 Demand Notice which thus clearly signified pre-existing dispute. However, it was rebutted by the Appellant that they had already issued a credit note to the Corporate Debtor of Rs 1.66 Cr. qua these supplies. This adjustment entry had not only been made in their own ledger account but the Corporate Debtor had also incorporated the credit note in their ledger account of 31.03.2021. When we see the ledger account of the Corporate Debtor as placed at page 145 of APB, we find this entry of Rs. 1.66 Cr. where in the remarks column against this entry, it is clearly shown that the adjustment was on account of “stringent smell & impurity in solvents”. This shows that there is a clear admission on the part of the Corporate Debtor that the Operational Creditor had incorporated the credit note of Rs 1.66 Cr albeit with a subsequent caveat that the original credit note was not delivered. This fact has also been clearly recorded by the Adjudicating Authority at para 10 of the impugned order wherein it has been recorded: *“Further, the respondent has submitted that though upon repeated objections, the Appellant incorporated the credit note of Rs 1.66 crore, however, the Original of the said Credit Note and tax paid note was not delivered to it....”*

**19.** Since the credit notes were already issued against the defective materials pointed out by the Corporate Debtor, we are inclined to agree with the Appellant that the dispute of inferior quality of goods raised in the letter of 10.12.2020 which was raked up again in the letter of 16.10.2021 stood resolved and settled and hence cannot be held to be a pre-existing dispute. It is equally pertinent to note that in their letter of 16.10.2021, there is no denial of outstanding payments claimed by the Operational Creditor except for stating that the Operational Creditor should reconcile the accounts and adjust the losses caused due to defective material supplied. To our minds, the Adjudicating Authority had failed to appreciate that the dispute raised in the e-mail dated 16.10.2021 by the Corporate Debtor was with reference to their earlier letter dated 10.12.2020 which dispute stood already resolved with the debit note having been issued. Hence this letter cannot be viewed as a letter which was adverting attention to a subsisting dispute.

**20.** This now brings us to the reply of the Corporate Debtor to the Section 8 Demand Notice of the Appellant which is as reproduced below:

*“From: Sachin Rao sachin@glfilms.com Dec 6, 2021*

*To: Chemical Suppliers India (P) limited*

*Dear Mr. Ankur Agarwal,*

*We have received your Demand Notice which is false & frivolous. Detailed Reply against the said Notice is being prepared and the same would reach you very soon. However please note that the calculation of amount due as claimed in your demand notice is per se wrong and does not take into account the rejections occurred due to inferior quality of chemicals supplied by you. You have also charged exorbitant interest on amounts already paid and settled between us. You are taking advantage of our business dealings done on good faith.*

*Your malafide intentions are clear as you are sending wrong account statements giving different figures on different emails. You have deliberately omitted one Credit Note No. REG/CR/001 dated 31.07.2021 for an amount of Rs.1,66,89,770/- (Rupees One Crore Sixty Six Lacs Eighty Nine Thousand Seven Hundred & Seventy Only) issued by your goodself. We also await the Original Copy of this Credit Note till date. Please be noted that this omission is serious in nature and tantamount to fraud and is punishable u/s 420 of IPC.*

*You have been sending me threatening mails since last 2-3 months although I have asked you on numerous times to come to the factory and reconcile the accounts but somehow you did not want to come and face the reality. We have lost so many business opportunities due to poor quality of chemicals supplied by you during last 2-3 years. Since business are done on good faith basis and due to your association with us since last 4-5 years we have given you so many chances and you have also accepted the rejections by issuing us Credit notes and giving rebates on rates for supplies from time to time. Now you are taking advantage of our good relation and have started harassing me and my Directors by issuing demand notices, sending wrong statement of accounts and charging exorbitant interests. Rest assure we will take necessary action against you if you do not come to the factory and reconcile the accounts and take stock of rejected materials lying with us since last 7-8 months.”*

*(Emphasis supplied)*

**21.** When we look at the above letter, we find that the Corporate Debtor has mentioned about omission of the credit note for Rs 1.66 Cr. However, when we look at the Section 8 Demand Notice at page 69 of APB, it is clear that the demand raised therein did not include the amount of Rs 1.66 cr with respect to defective goods supplied from September 2020 to October 2020. In fact, as noted in the preceding paragraphs, credit had already been given for Rs 1.66 Cr. and therefore the outstanding operational debt claimed was exclusive of Rs 1.66 Cr. There is no clear denial on the part of the Corporate Debtor of the credit note of Rs 1.66 Cr except stating that the original credit note was not delivered. Further,



there is no outright denial that no outstanding amount was payable on their part to the Operational Creditor. The dispute raised by the Corporate Debtor with regard to wrong calculation of outstanding unpaid debt therefore clearly lacks substance and is devoid of merit.

**22.** The other set of disputes raised by the Corporate Debtor finds mention in their reply to the Section 9 petition on 28.04.2022. The disputes raised in reply to the Section 9 petition again relate to the defective quality of the goods supplied vide invoices dated 09.04.2021 and 10.04.2021. Per contra, it is contended by the Appellant that these disputes had never been raised by the Corporate Debtor either at the time of receipt of the goods or within seven days from the date of delivery of goods as per terms and conditions specified in the invoice. Also, the lab test report which has been adverted attention to by the Corporate Debtor cannot be viewed as a pre-existing dispute since it is dated 27.01.2022 which is well after the issue of the Section 8 demand Notice. Moreover, the test report cannot be relied upon since it does not clearly indicate that the tested goods were those which were supplied by the Appellant which demonstrates that Respondent was only trying to evade liability by raising false grounds. Further, since these disputes were clearly raised after the Section 8 Demand Notice had been issued, it would be misconceived to treat them as pre-existing. In support of their contention, reliance was placed on the judgement of this Tribunal in the matter of **Rajeev K Aggarwal Vs Panipat Texo Fabs Pvt. Ltd. in CA (AT) (Ins.) No.715 of 2013** wherein it was held in Para 3 that:

*"Raising of dispute in regard to quality of goods being inferior/substandard or defective for the first time in reply to demand notice or in response to notice served by the Adjudicating Authority would not constitute a prior and pre-existing dispute contemplated under law as*



*a defence to the initiation of Corporate Insolvency Resolution Process more so when the contemporary record in regard to transactions between the Corporate Debtor and the Operational Creditor at the time of delivery of goods or immediately thereafter does not demonstrate raising of any dispute with respect to quality of goods supplied by the Operational Creditor.”*

**23.** When we look at the material on record, we find that the Corporate Debtor had issued a debit note dated 31.12.2021 for Rs 2.42 Cr. as placed at page 173 of APB. The Corporate Debtor in their reply to the present appeal has reiterated at page 11 therein that a debit note was issued seeking adjustment of Rs 2.42 Cr. on 31.12.2021. Admittedly, the debit note bearing invoice No. PR 275/FY2122 amounting to Rs 2.42 Cr is dated 31.12.2021 which date is clearly after issue of Demand Notice. This debit note was therefore clearly issued by the Respondent after the date of filing of Section 9 application. Chronologically seen it would be misconstruing of facts to treat these debit notes as pre-existing disputes.

**24.** Coming to the plausibility aspect of this debit note related dispute, when we look at the invoices placed at pages 44 to 51 of the APB, we find that it was clearly indicated on the invoices that no complaint about quality and shortage would be attended after 7 days from the delivery of goods. However, the complaints of defective goods were undisputedly filed much after the prescribed period of seven days allowable for filing a complaint. If there was any deficiency in the quality of goods, the Respondent should have brought it to the notice of the Appellant immediately after receipt of the goods in terms of the invoice. However, nothing has been put on record to show that the Corporate Debtor had brought to the notice of the Operational Creditor that these materials were

rejected by them. There has been no communication regarding quality of goods after delivery of goods. Not having done so, the belated defence taken does not inspire our confidence. This validates the contention of the Appellant that the defence taken by the Corporate Debtor of defective goods and attendant issue of belated debit note on 31.12.2021 is nothing but a moonshine defence.

**25.** Yet another tier of dispute that has been raised is that the Appellant had charged exorbitant interest with a view to orchestrate debt and default beyond the threshold level. Infact the Respondent has contended that no interest was payable as there was no practice of levying interest. When we look at the invoices in respect of the chemicals supplied, we find that the invoices clearly stipulate interest on delayed payment. These invoices placed at pages 44 to 51 of the APB clearly indicate therein that interest @24% p.a. will be charged on delayed payment of the bill. When the goods were delivered by the Operational Creditor to the Corporate Debtor and the Corporate Debtor accepted delivery of the goods without any demur or protest, the plea cannot be accepted that interest on delayed payment was not chargeable. When invoices were raised alongwith the delivery of goods which invoices clearly stipulated interest on delayed payment, the terms and conditions contained in the invoices hold good. The invoice itself acts like a written contract. The Corporate Debtor having enjoyed the benefit of the goods supplied to them, the terms and conditions of the invoices becomes willy-nilly applicable. Interest on delayed payment, once reflected in the invoice, the same acquires the character and nature of claim in terms of Section 3(6)(b) of IBC which includes a right to remedy for breach of contract under any law for the time being in force, if such breach gives rise to a right to payment, whether

or not such right is reduced to judgment, fixed, matured, unmatured, disputed, undisputed, secured or unsecured. A liability or obligation in respect of such a claim which is due from any person is a debt in terms of Section 3(11) of IBC. We also find that the Operational Creditor had issued debit notes in respect of interest amount to the Corporate Debtor which have been placed from pages 60-66 of the APB. Hence, we are not persuaded to accept the contention of the Respondent that levy of interest on delayed payment made the transactions disputed.

**26.** This now brings us to the reliance placed by the Adjudicating Authority on the police complaint of 27.09.2021 filed by the Corporate Debtor as a proof of pre-existing dispute. It was submitted by the Respondent that this Tribunal in ***Anil J Nemavaarkar Vs M/s Kumar Builders Mumbai Reality Pvt. Ltd.*** in ***CA(AT)/(Ins)No. 330 of 2022***, has held that police complaint filed with reference to claim amount is a pre-existing dispute and that the IBC is not for the purpose of resolving such disputes.

**27.** It was admitted by the Appellant that a police complaint was filed by the Respondent against the directors of the Operational Creditor and their Chartered Accountant for having demanded Rs 4.60 Cr as an outstanding amount without accommodating the debit notes issued against them. It was also argued that the Appellant on noticing the mistake committed by them in their email dated 10.09.2021 in demanding Rs 4.60 Cr as outstanding amount, they had already clarified on 09.12.2021 that they had mistakenly missed out adjusting the debit note of Rs 1.66 cr. It was therefore contended that since this mistake of demanding Rs 4.60 Cr had already been rectified and the outstanding debt

amount corrected, this dispute did not subsist any longer. This email of 10.09.2021 was a stand-alone case of inadvertent error out of the numerous communications exchanged between them and this solitary email cannot be treated to be a subsisting dispute. It was therefore asserted that this was a case of spurious defence set up by the Respondent.

**28.** We have no quarrel with the proposition that Section 9 application can be dismissed on account of pre-existing disputes arising out of police complaints. Be that as it may, each such complaint has to be balanced on the basis of facts and surrounding circumstances in which parties act and behave. When we look at the Section 8 Demand Notice, we find that the total amount of debt claimed is only Rs 2.92 Cr and not Rs 4.60 Cr which therefore clearly shows that the adjustment of Rs 1.66 Cr has been taken care off. The Demand Notice had been issued with the correct principal amount of Rs 1.72 Cr. and Rs 1.20 cr as interest on delayed payment. In this backdrop, we are inclined to agree with the Appellant that the filing of a police complaint premised on a ground which was no longer in existence cannot be considered as a pre-existing dispute.

**29.** Lastly, we come to the contention of the Respondent that the Recovery Suit filed by them in April 2022 was yet another ground showing dispute between the two parties. It was also pointed out by the Respondent that they had filed Civil Suit No. 37 of 2022 in the Commercial Court which is pending adjudication and that during the cross examination of the Managing Director of the Appellant-Operational Creditor in the said suit, the pre-existing dispute has been corroborated. This contention was opposed by the Appellant and contended that this cannot be treated as a pre-existing dispute since the civil suit was filed much

after filing of Section 9 application. In support of their contention reliance has been placed on the judgement of this Tribunal in the matter of ***State Bank of India Vs Abhijeet Ferrotech Limited*** in ***CA(AT)(Ins) No.690 of 2023*** wherein it has been held DRT proceedings which are still inconclusive cannot be a ground to hold Section 7 Application as barred.

**30.** When pointedly asked to clarify during our hearings, the Learned Sr. Counsel for the Respondent admitted that the cross-examination report in the civil suit which has been relied upon by the Respondent has not reached its culmination and that the additional documents pertaining to the civil suit filed by the Respondent on 23.04.2024 and 15.06.2024 before this Tribunal to corroborate pre-existing disputes did not form part of the records before the Adjudicating Authority. We are of the considered view that a Civil Suit filed after filing of Section 9 application cannot be used to defeat a Section 9 application. We also do not wish to deal with the cross-examination report in the civil suit and related documents as these have not been considered by the Adjudicating Authority as the latter did not have the benefit of these documents particularly so since the suit is still ongoing and the outcome of the suit is still not concluded.

**31.** We find that the Adjudicating Authority has in a very superfluous manner dismissed the Section 9 application by relying on pre-existing disputes which were non-existent at the time of Section 8 Demand Notice or were disputes which were clearly catapulted by the Respondent after filing of their reply to the Section 8 Demand Notice. The findings of the Adjudicating Authority do not commend us for the reasons stated in the foregoing paragraphs.

**32.** The Corporate Debtor has however contended that the present appeal is a gross abuse of the process of law by the Appellant. It is also submitted that the Corporate Debtor is a going concern having on its roll about 350 to 400 employees and a turnover of Rs 738 Cr. The Ld. Counsel for the Respondent has asserted that the provisions of IBC cannot be turned into a debt recovery proceeding and a going concern cannot be put to death. We quite agree that the objective of IBC is not to penalise solvent companies. The IBC cannot be a tool to coerce and intimidate the Corporate Debtor to capitulate to the unreasonable demands of the Operational Creditor. However, this cannot also be a broad spectrum shield to knock down a Section 9 application against the Corporate Debtor as long as the debt is due, payable and undisputed and there is incidence of default/failure to repay the dues of an Operational Creditor which is above the threshold level. An Operational Creditor can justifiably seek initiation of CIRP when no real dispute exists between parties which is pretty much the case here. However, keeping in mind that the Corporate Debtor is a going concern, in the interest of justice, we are however, amenable to allow them an opportunity to clear their operational debt to stave off the initiation of CIRP.

**33.** With the aforesaid discussion, we are of the considered view that the Adjudicating Authority has erroneously rejected the application under Section 9 of IBC. The Appeal is allowed with the following directions:

- (i) The impugned order dated 16.12.2022 passed by the Adjudicating Authority rejecting the Section 9 application is set aside.
- (ii) On a copy of this order being produced before the Adjudicating Authority by the Appellant within 10 days of its uploading, the

Adjudicating Authority may pass an order admitting the Section 9 application after allowing a period of one month.

- (iii) During the aforesaid period of one month, it shall be open to the Corporate Debtor to enter into settlement with the Operational Creditor for discharge of their debt. In the event of a settlement fructifying, the same may be brought on record before the Adjudicating Authority which then may consider the same and pass appropriate orders in accordance with law.
- (iv) Parties shall bear their own costs.

**[Justice Ashok Bhushan]**  
**Chairperson**

**[Barun Mitra]**  
**Member (Technical)**

**Place: New Delhi**  
**Date: 11.02.2025**

Abdul/Harleen