

IN THE NATIONAL COMPANY LAW TRIBUNAL  
NEW DELHI BENCH - II  
Company Petition (IB)No.2391/ND/2019

**In the matter of:**

**The Insolvency and Bankruptcy Code, 2016**

**AND**

**In the matter of:**

**Sections 9 of the Insolvency and Bankruptcy Code, 2016 read with Rule 6 of the Insolvency and Bankruptcy (Application to the Adjudicating Authority) Rules, 2016**

**AND**

**In the matter of :**

**DAYAL INDUSTRIES PRIVATE LIMITED**

CIN: U74899UP1998PTC116701

KM 18, LUCKNOW - BARABANKI ROAD,

MOHAMMADPUR CHOWKI,

BARABANKI- 225406 U.P.

**...Applicant/Operational Creditor**

**VERSUS**

**WHOLLY JOY PRODUCTS PRIVATE LIMITED**

CIN: U15549DL2016PTC303410

R-13, S/F GREATER KAILASH-I,

NEW DELHI - 110048

**...Respondent/Corporate Debtor**

**ORDER DELIVERED ON: 07.04.2021**

**CORAM:**

**Hon'ble Sh. Abni Ranjan Kumar Sinha, Member (Judicial)**

**Hon'ble Sh. L. N. Gupta, Member (Technical)**

**PRESENT: -**

**Adv. Samir Agrawal appearing for Petitioner and Adv. Nitesh Jain for Corporate Debtor**



**ORDER**

**(PER SH. ABNI RANJAN KUMAR SINHA, MEMBER JUDICIAL)**

1. The present petition is filed under Section 9 of Insolvency and Bankruptcy Code, 2016 read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rule, 2016 by the Applicant/ operational creditor, i.e. "*Dayal Industries Private Limited*" for initiation of Corporate Insolvency Resolution Process against the Respondent/ Corporate Debtor Company i.e. "*Wholly Joy Products Pvt. Ltd.*".
2. Brief facts mentioned in the application are as follows:
  - i. The Corporate Debtor approached the Operational Creditor for appointment as a distributor of cattle feeds. Consequently, the operational Creditor appointed the corporate debtor as a non-exclusive distributor of cattle feeds in the designated area of Palwal, Haryana on mutually agreed terms and conditions.
  - ii. Subsequently, the corporate debtor placed various purchase orders for supply of cattle feeds of different varieties commencing from 15.12.2016 to 18.02.2017. The cattle feeds, as per purchase orders, were dispatched by the Operational Creditor under sale invoice(s) and delivery(ies) of cattle feeds have been acknowledged by the Corporate Debtor.
  - iii. The cattle feeds under various sale invoices having total sale value of Rs. 66,07,756/- were dispatched during the period from 15.12.2016 to 18.02.2017 and acknowledged by Corporate Debtor and against the total sale value, amount of Rs. 24,50,000/- have been paid to the Operational Creditor at different intervals.



- iv. After crediting all receipts, an amount of Rs. 41,57,756/- is outstanding, due and payable to the Corporate debtor as on 21.03.2017.
- v. Against the due and payable amount, the Corporate debtor issued two cheques to the Operational Creditor aggregating to the outstanding and due amount of Rs. 41,57,756/-. However, the said cheques were returned dishonoured by the Operational Creditor's banker. The details of said cheques are as follows:
  - a. Cheques No. 318844 dated 14.08.2017 of Rs. 16,57,756/- drawn on Corporation Bank, Green Field Branch, Faridabad-121010.
  - b. Cheques No. 318843 dated 02.05.2017 of Rs. 25,00,000/- drawn on Corporation Bank, Green Field Branch, Faridabad-121010.
- vi. Corporate Debtor through one Mr. Mathur, vide email dated 10.06.2017 acknowledged the outstanding debt. The total amount of Rs. 54,93,605/- (Rs. 41,57,756/- as outstanding principal amount and Rs. 13,35,849/- as interest @12% accrued as on 20.08.2019) is due and payable to the Operational Creditor as on 20.08.2019.
- vii. Demand Notice dated 20.08.2019 was issued to Corporate Debtor by the Operational creditor demanding payment in respect of the outstanding debt due.
- viii. Dates from which such debt became due fall within the period from 15.12.2016 to 18.02.2017 as the liability for payment by Corporate Debtor commenced 30 days after the date of issuance of each of the invoices during the relevant period of supply. The last invoice was issued on 18.02.2017, therefore,



the liability of payment commenced on 21.03.2017, which is 30 days post the date of final invoice.

3. The Corporate debtor contended the following in its reply dated 20.11.2019:

i. The Operational creditor have not intentionally disclosed the following before this Tribunal:

a. Reply dated 30.08.2019 to Demand notice dated 20.08.2019 (sent within 10 days of the service of demand notice) stating that goods received by the Corporate Debtor was of Rs. 24.50 Lacs approx. against which the Corporate Debtor have made full payment under settlement of Rs. 24,50,000/- which is also admitted by the Operational creditor in its notice. The receipt of said reply was acknowledged by the Corporate debtor vide email dated 05.09.2019 stating that the said reply was received after statutory period i.e. after 10 days. The Corporate Debtor sent an email dated 07.09.2019 stating that 10 days time would end on 02.09.2019 as, 31.08.2019 and 01.09.2019 being Saturday and Sunday, accordingly, the same was sent on first working day i.e. 02.09.2019, which is within 10 days from the receipt of the Demand notice.

b. Letter dated 15.03.2017 issued by the corporate debtor to operational creditor requesting the operational creditor to return the blank security cheque no. 318843 and 318844 of corporate debtor drawn on Corporation Bank.



- c. Reply dated 22.05.2017 to the cheque dishonor demand notice dated 12.05.2017 for dishonor of cheque no. 318843 of Rs.25,00,000/- and Reply dated 30.08.17 to the cheque dishonor demand notice dated 22.08.17 for dishonor of cheque no. 318844 of Rs.16,57,756/-, the corporate debtor had disputed the liability as the entire amount of Rs.24.50 lacs had been paid to the operational creditor, and the blank security cheque no. 318843 was illegally used by the operational creditor, and further requested the operational creditor to return the blank security cheques no. 318843 and 318844.
- ii. Further, the invoices are not signed and not acknowledged, but are only computer-generated invoices. Further, the said invoices also relate to third party consignee other than the corporate debtor, to which the corporate debtor have no connection. Therefore, the computer-generated unsigned and unacknowledged invoice cannot be looked into for the adjudication of the claim of the operational debtor.
- iii. The Cheques no. 318844 and 318843 of Corporation Bank of corporate debtor were the blank security cheques given by the corporate debtor to operational creditor, as per the practice adopted by the operational creditor. At the time of any work order, operational creditor used to take blank security cheque from the corporate debtor, with the understanding that operational creditor after delivery of the goods, would fill the mutually agreed amount and only after that it would present the said cheques for encashment. It is further stated that the



said practice, is adopted by every supplier in the area and the said business model works on trust. Further, if any purchaser, who would not accept the said terms of payment, would not get the goods from the supplier, as the suppliers would not accept the work order (oral or written) without blank security cheque.

- iv. Operational Creditor have filed a false affidavit u/s 9(3)(b) of the Code, 2016, that there is no existence of dispute(s), on the date of issuance of demand notice, with the corporate debtor.
- v. The operational creditor has relied on the alleged e-mail dated 10.06.2017 of Mr. Madhur Mittal vide madhur@whollygroup.com , who is not the director or shareholder or the authorized representative of the corporate debtor. Further, the said e-mail id was also not of the corporate debtor. The e-mail id of corporate debtor is ypandey2008@gmail.com. Therefore, any alleged consent or admission or settlement by Mr. Madhur Mittal would be of no consequence as far as the Corporate Debtor is concerned.

4. Both the parties have also submitted the written submissions.

5. The facts of the written submissions filed by the petitioner in short are that the total outstanding debt is of Rs. 41,57,756/- and interest of Rs. 13,35,849/- as on 20.08.2019. Therefore, the total outstanding dues are Rs. 54,93,605/-.

6. It is further contended that the dates of supply of goods fall between the period from 15.12.2016 to 18.02.2017.

7. It is further contended that the Corporate Debtor has falsely claimed that the proceedings under Section 138 of the Negotiable Instruments Act is said to be a prior dispute under Section 8 of the IBC and it is also falsely

claimed by the respondent that the said proceeding was stayed, rather it is only a stay against the individual namely Mr. Sumit Mittal .

8. It is contended that out of the total goods delivered of Rs. 66,07,756/-, the Corporate Debtor has paid only Rs. 24,50,000/- at different intervals. It is further contended that the date of default is 21.03.2017.

9. It is further contended that the respondent employee Mr. Madhur Mittal vide email dated 10.06.2017 acknowledged the outstanding debt. The demand notice was issued on 20.08.20019 which was duly delivered on 22.08.2019. The respondent sent a reply to the demand notice, which was delivered to the applicant on 05.09.2019. after the 10 days of the statutory period.

10. The Corporate Debtor by filing the written submission contended that no purchase order or work order was issued by the Corporate Debtor and there is no acknowledgement receipt of any of the invoices filed by the Operational Creditor. All the invoices filed by the Operational Creditor are computer generated.

11. It is further contended that the Operational Creditor is guilty of playing fraud by placing reliance upon the forged and fabricated document i.e. email from [madhur@whollygroup.com](mailto:madhur@whollygroup.com), which does not belongs to the Corporate Debtor.

12. It is further contended that this fact has been admitted by Sumit Mittal, the brother of Madhur Mittal in Civil Revision No. 960/2017 filed before the Ld. District and Sessions Judge, Lucknow, in which, the submissions of the Sumit Mittal were recorded by the Ld. District and Sessions Judge, Lucknow as follows: -

***“The petitioner has stated that neither he is director of concerned Dayal Industries nor has he any relation or concern with the above said institute. In this regard he has filed an affidavit wherein he has shown as Hari Mohan Gupta and Amit Kumar as directors of the above said company. Hence,***

***the revision petition filed by the applicant petitioner is liable to be accepted and registered”.***

13. He therefore, submitted, that the correspondence made by Mr. Madhur Mittal is not binding upon the Corporate Debtor because he is not the authorized person of the Corporate Debtor.

14. It is further contended that the reply dated 30.08.2019 sent on 02.09.2019 was within 10 days from the service of the demand notice. The said demand notice was received on 22.08.2019 and the reply was also served upon the Operational Creditor and the same was acknowledged vide email.

15. It is further contended that the blank security cheque no 318843 was illegally used by the Operational Creditor. The Corporate Debtor had made a request to the Operational Creditor to return the blank security cheques nos. 318844 and 318843 and the same were not returned (which is at page 27 and 29 of the reply).

16. Ld. Counsel for the Corporate Debtor further contended that by filing additional documents, he enclosed the bank certificate in relation to the cheque book maintenance (which is at page 1 of the additional documents filed by the Corporate Debtor on 03.02.2020), which shows that the all the cheques were used between 17.10.2016 and 17.11.2016 and a fresh cheque book was issued on 17.11.2016.

17. It is further contended that the Operational Creditor with *mala fide* intention filled up the blank cheques and presented the same. The Corporate Debtor again vide reply dated 22.05.2017 and 30.08.2017 raised an objection for fraudulently using the cheques in question.

18. He has also placed reliance upon the decision of Mobilox Innovation Pvt. Ltd. vs Kirusa Software Pvt Ltd.: [(2018) 1 SCC 353, in which the Hon'ble Supreme Court in para 40 held that: -

***“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***

*S.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”.*

19. Now, in the light of the submissions made on behalf of the parties, we consider the case in hand. On the basis of the averment made in the application, reply as well as written submissions filed on behalf of the respective parties, we notice that the demand notice was sent on 20.08.2019 and the reply of the demand notice is also on record. The only contention of the Operational Creditor is that it was received after 10 days of the delivery of the demand notice and hence, cannot be taken into consideration and it is presumed that no dispute was raised.

20. In the light of these facts, we further notice that it is an admitted fact that the reply to the demand notice was received on 05.09.2019, whereas Ld. Counsel for the Corporate Debtor contended that it was sent on 02.09.2019 after receiving the demand notice on 22.08.2019.

21. At this juncture, when we refer to the tracking report filed by the applicant (page 82 of the application), we notice that the demand notice was delivered on 22.08.2019 and that has also been corroborated by the Corporate Debtor in the course of hearing. The Corporate Debtor has also admitted that they have sent the reply to the demand notice on 02.09.2019 and the contention of the Corporate Debtor is that since 31.08.2019 and 01.09.2019 were Saturday and Sunday, it was not sent on those dates. The respondent has also enclosed the tracking report ( page 15 of the paper book), which shows that reply to the demand notice was delivered on 05.09.2019.

22. At this juncture, we would like to refer to the decision of the Hon'ble NCLAT in Company Appeal (AT) (Insolvency) 548/2020 on the similar issues and the same is quoted below:-

**“18. We are of the view that the learned Adjudicating Authority instead of taking a technical objection that the Appellant/Corporate Debtor has not replied to the Demand**



Notice issued by the Respondent/Operational Creditor within statutory period of 10 days as contemplated under Section 8(2) of IBC, should have analysed the documents placed before it, before taking such objection.

19. As per Article 141 of the Constitution of India, we are bound by the decision of the Hon'ble Supreme Court in the matter of "*Mobilox Innovations Private Limited vs. Kirusa Software Private Limited*" reported in (2018) 1 SCC 353 at paragraph 33 held as under:

*"33. The scheme under Sections 8 and 9 of the Code, appears to be that an operational creditor, as defined, may, on the occurrence of a default (i.e. on non payment of a debt, any part whereof has become due and payable and has not been repaid), deliver a demand notice of such unpaid operational debt or deliver the copy of an invoice demanding payment of such amount to the corporate debtor in the form set out in Rule 5 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 read with Form 3 or 4, as the case may be [Section 8(1)]. Within a period of 10 days of the receipt of such demand notice or copy of invoice, the corporate debtor must bring to the notice of the operational creditor the existence of a dispute and/or the record of the pendency of a suit or arbitration proceeding filed before the receipt of such notice or invoice in relation to such dispute [Section 8(2)(a)]. 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 may be."*

20. The Hon'ble Supreme Court clearly held that the dispute must exist before the receipt of the Demand Notice or Invoices as the case may be. Further, in the matter of "*Innoventive Industries Ltd. Vs. ICICI Bank and Anr.*" - (2018)1 SCC 407, in paragraph 29 held which reads as under:

..

*"29. The scheme of Section 7 stands in contrast with the scheme under Section 8 where an operational creditor is, on the occurrence of a default, to first deliver a demand notice of the unpaid debt to the operational debtor in the manner provided in Section 8(1) of the Code. Under Section 8(2),*



*the corporate debtor can, within a period of 10 days of receipt of the demand notice or copy of the invoice mentioned in subsection (1), bring to the notice of the operational creditor the existence of a dispute or the record of the pendency of a suit or arbitration proceedings, which is pre-existing – i.e. before such notice or invoice was received by the corporate debtor. The moment there is existence of such a dispute, the operational creditor gets out of the clutches of the Code.”*

..

21. Further, this Bench in the matter of “*Vinod Mittal Vs. Rays Power Exports & Anr.*” in Company Appeal(AT) (Insolvency) No. 851 of 2019 dated 18.11.2019 held in paragraph-11 as under:

..

*11. Having gone through the matter and on considering record, there remains hardly any doubt that the earlier correspondence shows that between the parties there were disputes regarding installation of the project as well as functioning of the same. Although the project had been commissioned for which Completion Certificate had been issued, still if disputes had arisen between the parties regarding the installation and functioning of the project, the Operational Creditor merely pointed out Certificate of Appreciation dated 19th April, 2015 issued and claims that once Completion Certificate had been issued, Corporate Debtor could not raise issues with regard to the quality of the work done. In fact, the record shows that there had been even a review meeting between Operational Creditor and Corporate Debtor and excerpts of which minutes have been placed on record by the Corporate Debtor at Page – 187 which showed that full installation was yet to be completed (see Page – 188). There was also discussion regarding Sag Structure Correction Action Plan. In fact, there is Annexure – 24 showing the Experts enquiry on 5th May, 2015 as to when the plant would be declared fully commissioned so that they could start electrical review of the project. Looking to such material on record, it is quite clear that there was pre-existing dispute regarding*

*installation as well as operation of the project. When this is so, the Section 9 Application could not have been admitted. In fact, when e-mail dated 20th October, 2016 (Page - 431) was already before the Adjudicating Authority and it had also noticed the same, the Adjudicating Authority should have found preexisting dispute and the Section 9 Application should have been rejected. Only by observing that the Respondent - Corporate Debtor have not come forward to dispute the Application would not be sufficient to initiate CIRP, if the record already showed existence of dispute."*

..

And in the matter of "Mr. Gajendra Parihar Vs. M/s Devi Industrial Engineers & Anr." in Company Appeal(AT)(Insolvency) No. 1370 of 2019 this Bench dated 18.03.2020 was of the view that existence of dispute prior to the issuance of Demand Notice, the Application under Section 9 IBC is not maintainable and once there is existence of such dispute, the Operational Creditor gets out of the clutches of the Code.

#### CONCLUSION:

22. Having gone through the records and the law laid down by the Hon'ble Supreme Court and the precedents of this Tribunal, we are of the considered view that the correspondences i.e., e-mail/letters show that there is existence of disputes prior to issuance of Demand Notice.

23. Exchange of e-mails/correspondences, as referred above, clearly establishes that there is a pre-existing dispute between the parties regarding completion of the work and the Appellant/Corporate Debtor continuously made complaints regarding non-completion of work and deficiency in services, thereby loss caused to the Appellant/Corporate Debtor.

24. Therefore, it is quite clear that there is pre-existing of dispute regarding completion of the work and the learned Adjudicating Authority ought not to have admitted the Application under Section 9 of IBC filed by the Respondent/Operational Creditor. Even in the Reply filed by the Appellant/Corporate Debtor before the learned Adjudicating Authority pursuant to Section 9 Application, it is quite clear that there was sufficient material produced before the



**learned Adjudicating Authority and the learned Adjudicating Authority ought to have considered the materials placed before it.**

**25. We are of the considered view that the learned Adjudicating Authority should have considered the substantial material placed before it in its correct perspective and law laid down by the Hon'ble Supreme Court in this regard, before passing the Impugned Order dated 04.06.2020 thus committed error.**

**26. It is re-iterated that the Code is a beneficial legislation intended to put the Corporate Debtor on its feet and it is not a mere money recovery legislation for the Creditors.**

**27. For the above reasons, we set aside the Impugned Order dated 04.06.2020 passed in (IB) No. 1906(ND)/2019 by the learned Adjudicating Authority."**

23. Now, in the light of the aforesaid decision, when we consider the case in hand, we notice that the Corporate Debtor in its reply to the demand notice in para 2 specifically mentioned this fact that ***"it is further stated that goods received by our client was of Rs. 24.50 lakhs approx. against which our client had made a full payment under settlement of Rs. 24,50,000/- which is also admitted in your notice"***.

We also notice that on 15.03.2017, the Corporate Debtor had written a letter to the Operational Creditor for return of the security cheque nos. 318843 and 318844 of the Corporation Bank. (Page 19 of the reply).

24. We further notice that the Corporate Debtor in its reply has also enclosed the reply dated 22.05.2017 (page 27 to 28 of Reply), which is in response to the demand notice dated 12.05.2017 and in that reply also it was mentioned that the amount of Rs. 24,87,430/- has already been paid to the Operational Creditor in terms of settlement and the Operational Creditor has used the blank security cheques nos 318843 and 318844.



25. At this juncture, we would like to refer to the Bank certificate regarding the use of cheque books. By filing additional documents, Corporate debtor has enclosed the bank certificate in relation to the cheque book maintenance (page 1 of the additional documents filed by the Corporate Debtor on 03.02.2020), which shows that the all cheques were used between 17.10.2016 and 17.11.2016 and a fresh cheque book was issued again on 17.11.2016. Therefore, those two cheques were issued much before the date as claimed by the operational creditor .

26. Since, this reply dt. 22.05.2017 to the demand notice 12.05.2017 is prior to receiving of the demand notice under Section 8 of the IBC and the amount has already been disputed, therefore, in view of the decision referred Supra even if the reply of the demand notice is not sent within ten days of the delivery of demand notice under section 8(2) of IBC2016. If the documents available on the record establish the pre-existing dispute, then that shall be taken into consideration and the reply cannot be rejected merely on technical grounds.

27. For the reason discussed above, we are of the considered view that the Corporate Debtor, by referring to the correspondence made between the parties, have succeeded to establish that there is a pre-existing dispute between the parties prior to the issuance of Demand Notice .

28. At this juncture, we also notice that the Operational Creditor at page 69 of the petition has enclosed the demand notice and on perusal of that, we find that the said demand notice was sent in Form-3. Therefore, at this juncture, we would like to examine the provision of law, under which the Operational Creditor is required to deliver the demand notice. **The Rule 5 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016** prescribes the procedure for sending the demand notice and the same is quoted below:-

**Rule 5. Demand notice by operational creditor. -**



“(1) An operational creditor shall deliver to the corporate debtor, the following documents, namely, -

(a) a demand notice in Form 3; or

(b) a copy of an invoice attached with a notice in Form 4.

(2) The demand notice or the copy of the invoice demanding payment referred to in sub-section (2) of section 8 of the Code, may be delivered to the corporate debtor,

(a) at the registered office by hand, registered post or speed post with acknowledgment due; or

(b) by electronic mail service to a whole time director or designated partner or key managerial personnel, if any, of the corporate debtor.

(3) A copy of demand notice or invoice demanding payment served under this rule by an operational creditor shall also be filed with an information utility, if any.”

31. The similar question was discussed by the Hon’ble NCLAT in Company Appeal (AT) (Insolvency) No. 1354/2019 decided on 24.02.2020. Relevant paragraphs 44, 45, 46, 47 and 48 are quoted below:-

**“44. The use of the phrase, deliver a demand notice of unpaid**

**operational debt or copy of an invoice demanding payment of the amount involved in Section 8(1) does not provide the Operational Creditor, with the discretion to send the demand notice in Form 3 or Form 4 as per its convenience. Rather, it depends directly on the nature of the operational debt and applicability of Form 3 or Form 4 as per the nature of the transaction.**

**45. It is important to mention that legislative provisions are made with a larger perspective to deal with all the eventualities that may arise in the implementation of the**



*said provisions. Therefore, the use of the word –OR in Section 8 cannot be interpreted as such, that the Insolvency and Bankruptcy Code has provided a choice or a discretion to an Operational Creditor, to provide an escape route from submission of the invoice, which can be treated as the most relevant document to prove the debt and amount in default.*

*46. On perusal of the language of Section 8, it is clear that an Operational Creditor on the occurrence of default has been provided with the option of delivering a demand notice of the unpaid operational debt or raising an invoice demanding payment of the amount involved. The two options available for initiation of Corporate Insolvency Process are provided to deal with all the eventualities that may occur. For example, if an operational debt is in the nature of salary dues, then in that situation, the question of submitting an invoice does not arise. To deal with such a situation, Section 8 contains the provision for issuance of demand notice of the unpaid operational debt. Form 3 of the Adjudicating Authority Rules has only laid down the condition that the applicant has to give the details of the amount of debt, details of the transaction on account of which such debt fell due and the date from which such debt fell due, and as per Column 7 of the said Form 3, applicant has to attach the documents to prove the existence of operational debt and the amount in default. Likewise, where the operational debt involves the generation of the invoice, then in that case, invoice raising the demand may be sent to the Corporate Debtor demanding the invoice amount. In such a situation, the Operational Creditor has to issue the demand notice in Form 4 along with the invoice.*

*47. Thus, it is clear that the choice of issuance of demand notice u/s 8(1) of the Insolvency and Bankruptcy Code 2016, either in Form 3 or Form 4, under the Insolvency and Bankruptcy Code Application to Adjudicating Authority Rules 2016, depends on the nature of Operational Debt. Section 8(1) does not provide the Operational Creditor, with the discretion to send the demand notice either Form 3 or Form 4, as per its convenience. The applicability of Form 3 or Form 4 depends on whether the invoices were generated during the course of transaction or not. It is also made clear that the copy of the invoice is not mandatory if the demand notice is issued in Form 3 of the Insolvency and Bankruptcy Code Application to Adjudicating Authority Rules 2016 provided the documents to prove the existence of operational debt and the amount in default is attached with the application.*

*48. It is also made clear that for filing application u/s 9 of Insolvency and Bankruptcy Code 2016, in case the demand notice is delivered in Form 3 of Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules 2016, then the submission of a copy of the invoice along with the application in Form 5 is not a mandatory requirement, provided the documents to prove the existence of operational debt and the amount in default is attached with the application.”*

29. Now, in the light of the aforesaid decision, when we consider the case in hand, we notice that in this case, the claim of the applicant is based upon the invoices but it appears from the demand notice that the applicant has not enclosed the invoices rather in column VII of Form 3, the petitioner has mentioned that **“true copy of dishonoured cheques along**

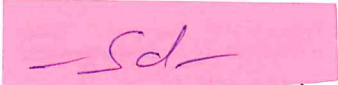



**with the corresponding bank memos are annexed herewith collectively as Annexure-A”** and no other document is enclosed. This means that in terms of Section 8(1) of the IBC, the Petitioner has neither enclosed the invoices nor sent the notice in Form-4. Rather it sent the demand notice in Form-3. Therefore, in the light of the decision referred above, we are of the considered view that the demand notice delivered in the present case is not a valid one in terms of Section 8(1) of IBC,2016 read with Rule 5(1)(b) of the the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016. Hence in our view, the valid demand notice has not been delivered by the Petitioner before filing the present application under Section 9 of the IBC.

30. So under such circumstances, we have no option but to hold that the Corporate Debtor had raised the dispute regarding the existence of debt and the Operational Creditor has also failed to deliver the proper demand notice u/s 8(1) IBC 2016 before filing the petition u/s 9 of IBC, 2016 . Hence, we are of the considered view that the Operational Creditor has falsely sworn in an affidavit under Section 9 (3) (b) stating that no notice was given by the Corporate Debtor relating to the payment of the unpaid operational debt.

31. Therefore, in terms of Section 9 (5) (ii) (a) and (d), the Application being incomplete and the fact that notice of existence of dispute has been raised by the Corporate Debtor, this Adjudicating Authority has no option but to reject the Application of the Operational Creditor.

32. **Accordingly, the present Petition is not maintainable and the same is Dismissed.**

  
**L. N. Gupta**  
**Sinha Member Technical**

  
**Abni Ranjan Kumar**  
**Member Judicial**