NATIONAL COMPANY LAW APPELLATE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

Company Appeal (AT) (Insolvency) No. 1470 of 2023

[Arising out of the Impugned Order dated 31.10.2023 passed by the Adjudicating Authority, National Company Law Tribunal, New Delhi Bench-IV, New Delhi in CP (IB) No. 1007/ND/2018]

In the matter of:

Pramod Kumar Chaubey
(Suspended Director of the Corporate Debtor
Schneider Prototyping India Pvt. Ltd)
Having his office at:
12th Floor, Unit No. 25, Building No 9,
Tower B DLF Cyber City,
Phase III Gurgaon - 122 002
Haryana, India

...Appellant

Versus

1. Mr. Praveen Kumar Jain
IRP of the Corporate Debtor
501, Lane No 3A (Band Gali), Chanderlok
behind Sanatan Dharam Mandir,
New Delhi 110 093

...Respondent No.1

2. Pawan Gaur
House No 372, Sector 15A
Noida, District
Gautram Buddha Nagar, UP

...Respondent No.2

Present :

For Appellant : Mr. Nalin Kohli, Ms. Nimisha Menon, Mr. Ayuushman Aroraa and Mr. Saurajay Nanda, Advocates.

For Respondent : Mr. Vishal Ganda and Mr. Srijan Jain, Advocate for IRP.

Mr. Krishnendu Datta and Mr. Abhijeet Sinha, Sr. Advocates with Mr. Apoorv P. Tripathi, Mr. Apaan Mittal, Mr. Dheeresh K. Dwivedi and Mr. Rahul Gupta, Advocates for Respondent No. 2.

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 31.10.2023 (hereinafter referred to as 'Impugned Order') passed by the Adjudicating Authority (National Company Law Tribunal, New Delhi Bench-IV) in CP (IB) 1007/ND/2018. By the impugned order, the Adjudicating Authority has admitted the Section 9 application filed by Shri Pawan Gaur-Operational Creditor against M/s Schneider Prototyping India Pvt. Ltd.-Corporate Debtor and admitted the Corporate Debtor into Corporate Insolvency Resolution Process (**'CIRP'** in short). Aggrieved by the impugned order, the present appeal has been filed by the Suspended Director of the Corporate Debtor.

2. We have heard Shri Nalin Kohli, Ld. Counsel appearing for the Appellant and Shri Krishnendu Datta and Shri Abhijeet Sinha, Ld. Senior Counsels representing the Operational Creditor-Respondent No. 2. Shri Vishal Ganda appeared on behalf of the IRP.

3. Making his submissions, the Ld. Counsel for the Appellant submitted that the Corporate Debtor-M/s Schneider Prototyping India Pvt. Ltd. ('**SPIN**'

in short) had entered into an Employment Agreement (**'EA'** in short) with Mr. Pawan Gaur-Operational Creditor/Respondent No.2 whereunder Respondent No. 2 was to act as Managing Director of SPIN on a salary of Rs. 2.50 lakhs per month along with perks/welfare benefits. In terms of the EA, the salary was to be negotiated annually and if not renegotiated, then a fixed 20% escalation was admissible for the first five years and 7% escalation thereafter. The term of EA was for a period of five years up to 31.03.2017 effective from 01.04.2012. It was further submitted that the EA was not formally renewed after five years. Submitting that the Corporate Debtor started facing a severe financial crunch due to mismanagement by Respondent No. 2 and while SPIN was trying to investigate into the reasons for the financial crisis, Respondent No. 2 anticipating accountability being fixed on him hurriedly sent a communication on 08.07.2018 to the Corporate Debtor conveying his resignation.

4. Elucidating further, it was submitted that in his resignation email, Respondent No. 2 made a claim of Rs.1.10 cr as pending from the Corporate Debtor towards pending salaries without detailed break-up. In the absence of specific details, the Corporate Debtor while accepting the resignation could only summarily deny the claim of the Respondent No. 2. Thereafter, Respondent No. 2 served a demand notice on the Corporate Debtor on 20.06.2018 claiming employment dues payment of which had been defaulted by them. Subsequently, Respondent No. 2 filed the Section 9 application claiming an outstanding amount aggregating Rs. 17.53 cr as due and payable by the Corporate Debtor. It was submitted that the claims made by

Respondent No. 2 showed huge variance from time to time which in turn shows the frivolity of the claim and hence its untenability.

5. Apart from claiming that there was no admitted, crystallised operational debt due and payable to Respondent No.2, it was asserted that the sum demanded by Respondent No. 2 following his resignation on 07.06.2018 was disputed for several reasons. The sums claimed and computed by Respondent No.2 was not in accordance with the EA. The outstanding amount claimed by Respondent No.2 was neither due nor payable since Respondent No. 2 was already paid Rs. 50 lakhs and Rs. 81 lakhs as advance salary beyond his EA dues. It was submitted that the advance had been given as requested by Respondent No. 2 who had cited need for funds. It was also pointed out that the monies received by the Respondent No. 2 was already in excess over what it was entitled to receive under the EA. It was also pointed out that Respondent No. 2 had made unauthorised big-ticket payments to himself and other related parties thus draining the Corporate Debtor's bank accounts. These payments were made in collusion with a CFO appointed by himself. Taking advantage of the deep and pervasive management control enjoyed by Respondent No. 2, he also misused the sole signatory rights to operate the bank account of the Corporate Debtor to transfer money to himself. This included transfer of adhoc payment of Rs. 1.87 cr; alleged bonus payments of Rs. 1.72 cr; additional bonus payments of Rs. 53 lakhs and payments to a related company of Rs. 1.37 cr. It is also pointed out that following the resignation of Respondent No. 2, it had come to light that he had defrauded and siphoned away more than Rs. 7 cr by abusing the trust reposed on him

by the Corporate Debtor. Thus, the Corporate Debtor had paid himself sums vastly in excess of the actual dues under the EA which cannot be ignored.

6. It was vehemently contended that the Adjudicating Authority while admitting Section 9 application had wrongly held an amount of Rs. 4.18 lakhs as salary payable to Respondent No. 2 besides another Rs.24.44 lakhs as outstanding amount towards Provident Fund (**PF**) as debt and default by the Corporate Debtor. It was contended that neither the sum of Rs.4.18 lakhs nor Rs. 24.44 lakhs were due and payable. It was pointed out that the Adjudicating Authority while holding that Rs. 4.18 lakhs was payable as salary dues as per the balance sheet, it failed to take into account the other entries in the balance sheet which showed advances already made to Respondent No. 2 running into more than Rs. 6 cr. Assailing this one-sided analysis of the balance sheet by the Adjudicating Authority, it was also vociferously contended that the Adjudicating Authority wrongly held that the Corporate Debtor was claiming set off/counter claim in respect of amounts to be paid to Respondent No.2. All that had been contended before the Adjudicating Authority was that Respondent No.2 had been paid excess of his entitlement and therefore sums claimed by him in the Section 9 application are not payable to him. This was wrongly viewed by the Adjudicating Authority as adjustment of counter claims. The Adjudicating Authority therefore proceeded on an erroneous basis that the Corporate Debtor has raised counter claims and that the Corporate Debtor wanted adjudication of the counter claims by the Adjudicating Authority.

7. Further contesting that the sum of Rs. 24.44 lakhs was also not due and payable it was pointed out that welfare claim benefits cannot constitute the basis for initiating the CIRP since such claims do not qualify as operational debt. Reliance was placed on the judgment of this Tribunal ***Kishore K. Lonkar Vs. Hindustan Antibiotics Ltd.*** in **CA (AT) (Ins) No. 934 of 2021.**

8. Refuting the contentions made by the Appellant, the Learned Sr. Counsels for the Respondent No. 2 submitted that the audited balance sheet for year ending 31.12.2018 categorically notes that salary payable to Respondent No. 2 was Rs. 4.18 lakhs. Once the debt has been admitted by the Appellant in its balance sheet and the debt amount exceeded the threshold limit of Rs. 1 lakh, the Adjudicating Authority had correctly admitted the Section 9 application. It is further contended the Corporate Debtor had also admitted its liability to pay Rs. 24.44 lakhs to Respondent No. 2 towards PF dues. It has been further contended by Respondent No. 2 that other claims like Life Insurance, LTA, Gratuity, PF, Bonus etc; were also payable along with salary as it constituted a part of the EA in clauses 4 and 5 thereof. It was also mentioned that the application of ***Lonkar judgment*** supra by the Corporate Debtor in the given factual matrix is misplaced.

9. Since there is only a need to show that there is an operational debt of more than Rs. 1 lakh to qualify admission of Section 9 application, and the same having been met, the Adjudicating Authority had rightly admitted the Section 9 application. Moreover, the admission of outstanding dues payable to Respondent No. 2 is also borne out from the email dated 08.06.2018 sent by the Corporate Debtor to Respondent No. 2 while accepting his resignation

wherein information was sought on outstanding dues. It was also contended that the Corporate Debtor was trying to defeat and frustrate their legitimate claims by claiming adjustment of counter claims which the Adjudicating Authority rightly refused since claims and counter-claim set-off falls outside the domain of the summary jurisdiction of the Adjudicating Authority as has been held by this Tribunal in ***Rakesh Kumar Vs. Flourish Paper & Chemicals Ltd.*** in ***CA (AT) (Ins) No. 1161 of 2022***.

10. It was contended that there was no requirement to establish crystallised dues before issue of demand notice. In any case the Corporate Debtor in their email dated 07.06.2018 have themselves admitted that monies were payable to Respondent No. 2 and no dispute was raised at that point. It has also been asserted that prior to issue of demand notice, there was not a single dispute raised by the Corporate Debtor on Respondent No. 2. Only after the receipt of demand notice, three frivolous criminal complaints have been filed against Respondent No. 2 besides making reversal of TDS payments. Emails exchanged between the two parties cannot be viewed as pre-existing disputes since these emails only show the dissatisfaction on how the Corporate Debtor was being managed but did not amount to disputing the claims of Respondent No. 2. It has also been contended that Respondent No. 2 was instrumental in expanding the business of the Corporate Debtor and enhancing its turnover, operating profitability and bringing in positive cash generation. In fact, the trade receivables as well as profit margins drastically suffered after Respondent No. 2 resigned from the Corporate Debtor.

11. It has also been denied that any unauthorised payments were made by Respondent No. 2 to himself or related parties. The Corporate Debtor had five bank accounts and only one of these bank accounts could be operated singly by Respondent No. 2. The account with PNB was the principal account where all monies paid to the Corporate Debtor were received in which Respondent No. 2 was not a signatory. Respondent No.2 had at all times functioned under the overall supervision of the Board of Directors of the Corporate Debtor which had never raised any issue of siphoning of money. It has been vehemently asserted that the poor financial condition of the Corporate Debtor is writ large as its net worth has eroded and it is no longer a solvent company as evident from the financial statements of the Corporate Debtor. Hence the Corporate Debtor was merely trying to defeat and frustrate their legitimate claims by raising the defence of pre-existing disputes on flimsy grounds.

12. It was further stated that the contention of the Corporate Debtor that the financial statement for the year ending 31.12.2019 showing an amount of Rs. 6.79 cr classified as advance recoverable from Respondent No. 2 by the Corporate Debtor cannot be relied upon since the financial statement for 31.12.2018 and 31.12.2019 was filed much after Respondent No. 2 had left employment of the Corporate Debtor and that these entries were manipulated as an after-thought. It was submitted that the balance sheets of 2018 and 2019 are unreliable documents with no probative value as they were prepared after filing of Section 9 application. Hence, the same cannot be held against Respondent No. 2 as it is clearly a cover-up attempt to defeat their valid claims.

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

14. The issue for our consideration is whether payment to the Respondent No. 2 was due from the Corporate Debtor and, if so, whether a default has been committed by the Corporate Debtor in respect of payment of such debt and whether there was any pre-existing dispute surrounding the debt.

15. Before dwelling on the facts of the present case, a quick glance at the relevant statutory construct of IBC would be useful. Section 8 of the IBC 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, the existence of dispute, if any.

16. Section 8 of the IBC is as follows:

> ***"8. Insolvency resolution by operational creditor-***
> *(1) An Operational creditor may, on the occurrence of a default, deliver a demand notice of unpaid operational debt or copy of an invoice demanding payment of the amount involved in the default to the Corporate debtor in such form and manner as may be prescribed.*
> *(2) The corporate debtor shall, within a period of ten days of the receipt of the demand notice or copy of the invoice mentioned in sub-section bring to the notice of the operational creditor—*
> *(a) Existence of a dispute, if any, or record of the pendency of the suit or arbitration proceedings filed before the receipt of such notice or invoice in relation to such dispute;*
> *(b) The payment of unpaid operational debt—*
> *(i) by sending an attested copy of the record of electronic transfer of the unpaid amount from the bank account of the corporate debtor; or*

(ii) by sending an attested copy of record that the operational creditor has encashed a cheque issued by the corporate debtor.

Explanation.—For the purposes of this section, a "demand notice" means a notice served by an operational creditor to the corporate debtor demanding payment of the operational debt in respect of which the default has occurred."

17. This now brings us to the statutory construct of IBC post issue of demand notice by the Operational Creditor as laid down in Section 9 of IBC. Under Section 9(1), 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. For convenience, we reproduce relevant provisions of Section 9 of IBC which is to the following effect:

"9. Application for initiation of corporate insolvency resolution process by operational creditor.*- (1) After the expiry of the period of ten days from the date of delivery of the notice or invoice demanding payment under sub-section (1) of section 8, if the operational creditor does not receive payment from the corporate debtor or notice of the dispute under sub-section (2) of section 8, the operational creditor may file an application before the Adjudicating Authority for initiating a corporate insolvency resolution process."*

Section 9(5)(ii) is as follows:
"(5) The Adjudicating Authority shall, within fourteen days of the receipt of the application under subsection (2), by an order—
(i).....
(ii) reject the application and communicate such decision to the operational creditor and the corporate debtor, if—
a) the application made under sub-section (2) is incomplete;
b) there has been payment of the unpaid operational debt;
c) the creditor has not delivered the invoice or notice for payment to the corporate debtor;
d) Notice of dispute has been received by the operational creditor or there is a record of dispute in the information utility; or

e) any disciplinary proceeding is pending against any proposed resolution professional:

Provided that Adjudicating Authority, shall before rejecting an application under sub-clause (a) of clause (ii) give a notice to the applicant to rectify the defect in his application within seven days of the date of receipt of such notice from the Adjudicating Authority."

18. Equally pertinent to note are two seminal judgements of the Hon'ble Apex Court which have propounded guiding principles that have to borne in mind while considering Section 9 applications. The Hon'ble Supreme Court in its decision in ***M/s. Innoventive Industries Ltd. Vs. ICICI Bank Ltd. (2018) 1 SCC 407*** while distinguishing the scheme of insolvency resolution by the Financial Creditor (Section 7) and insolvency resolution by the Operational Creditor (Section 9) of IBC observed as follows:-

"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 sub-section (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.

30. On the other hand, as we have seen, in the case of a corporate debtor who commits a default of a financial debt, the adjudicating authority has merely to see the records of the information utility or other evidence produced by the financial creditor to satisfy itself that a default has occurred. It is of no matter that the debt is disputed so long as the debt is "due" i.e. payable unless interdicted by some law or has not yet become due in the sense that it is payable at some future date. It is only when this is proved to the satisfaction of the adjudicating authority that the adjudicating authority may reject an application and not otherwise."

19. The other landmark judgement is ***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. In case the unpaid operational debt has been repaid, the corporate debtor shall within a period of the self-same 10 days sent and attested copy of the record of the electronic transfer of the unpaid amount from the bank account of the corporate debtor or send an attested copy of the record that an operational creditor has encashed a cheque or otherwise received payment from the corporate debt [Section 8(2) (b)]. It is only if, after the expiry of the period of the said 10 days, the operational creditor does not either receive payment from the corporate debtor or notice of dispute, that the operational creditor may trigger the insolvency process by filing an application before the adjudicating authority under Sections 9(1) and 9(2).....*
>
> *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 one 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."

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"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."

20. When we look at the impugned order, we find that the Adjudicating Authority has also clearly noted the tests to be satisfied for considering the Section 9 application. We have no hesitation in observing that the tests as outlined in the impugned order are very much in conformity with the tests laid down by the Hon'ble Supreme Court in the ***Mobilox judgement*** supra. The relevant extracts of the impugned order as reproduced below:

"17. ……However, this Adjudicating Authority's jurisdiction is limited to the test of the ingredients which have to be satisfied, in particular with the mandate of Section 9(5) of the Code, 2016 which are as follows:-

(i) Whether there is an "operational debt" as defined in Sec. 5(20) of the Code exceeding the pecuniary threshold limit as envisaged under Section 4 of the Code, 2016?

(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?"

21. This now brings us to analyse how the Adjudicating Authority has applied the above tests to the facts of the present case. To begin with, we shall see how the Adjudicating Authority has dealt with the issue of existence of debt above the statutory threshold and the default, if any. The findings of the Adjudicating Authority in the impugned order are as extracted hereunder:

"22. Further, as regards the contention of the Corporate Debtor that there are no admitted, crystallised Operational Debts due and payable as the Corporate Debtor does not owe any sums to the Applicant rather, the Applicant owes significant sums to the Corporate Debtor, this Adjudicating Authority finds that the Corporate Debtor in its Audited Balance Sheet for the period ending 31.03.2019 had admitted the amount of Rs.4,18,577/- as Salary payable to the Applicant as at 31 December, 2018. Further, the Corporate Debtor had filed an affidavit dated 04.07.2023 in response to the Applicant's affidavit dated 09.05.2023, wherein the Corporate Debtor had admitted its liability of Rs.24,44,578/- outstanding towards the Provident Fund but claimed set off against the said admitted Provident Fund liability on the basis of counter claims. The relevant note is extracted hereunder for ready reference:

"However, since the employment agreement (clause 5.2 (v) provides for provident fund contribution to the extent of 8.33% of the salary the figures in column C have been stated accordingly. On this basis an amount of Rs ₹25,32,778 would be payable to Pavan Gaur as per his Employment Agreement as against which SPIN has already paid an amount of ₹88,200 to Pavan Gaur and only an amount of ₹24,44,578. This amount would none the less

have to be set off/adjusted against all sums that Pavan Gaur has taken in excess and refund to SPIN."

23. We have already referred to the Hon'ble NCLAT's judgement in ***Deepak Gupta Vs. Ved Contracts Pvt. Ltd. & Ors.*** *wherein it has been laid down that the question of claims and counter claims cannot be decided by the Adjudicating Authority under an application filed u/s 9 of the Code. The same principle has been reiterated by Hon'ble NCLAT Principal Bench in* ***Rakesh Kumar Vs Flourish Paper & Chemicals Limited & Anr. in Company Appeal (AT) (Insolvency) No. 1161 of 2022,*** *dated 27.09.2023 that a counter-claim cannot be adjudicated in a section 9 application. Accordingly, the contention of the Corporate Debtor based on counter claim/set off cannot sustain.*

26. It is pertinent to note that once the Debt above the pecuniary threshold is shown as due, it is for the Corporate Debtor to establish that there are no Outstanding Dues to be paid to an Operational Creditor/Applicant u/s 9 of the Code. In this connection, it is not out of place, for this Adjudicating Authority, to make a significant mention that the Corporate Debtor, had not placed on record any conclusive document to show that the amount due to the Applicant has been paid. The sum and substance of the Corporate Debtor's defence is that the amount due to the Applicant has been set off by the Corporate Debtor towards the counter claims as raised by the Corporate Debtor.

27. In view of the aforesaid discussion and the judgements referred to above, this Adjudicating Authority, without delving into the exercise of determining the exact quantum of the Operational Debt is of the considered view that there exists an operational debt above the threshold limit of Rs.1 Lakh and the same is 'due and payable' by the Corporate Debtor. Hence, the first two mandatory conditions regarding the existence of 'Debt' above the pecuniary threshold limit and its 'default' are answered in the affirmative."

(Emphasis supplied)

22. To summarise the findings contained in the above paras of the impugned order as reproduced above, we notice that the Adjudicating Authority has held that the Corporate Debtor had admitted a liability of over Rs 28 lakhs towards salary and PF dues. It also held that the Corporate Debtor has not adduced any evidence to show that the said amount has been paid off but tried to take

the defence of set off by way of counter-claims which is not a sustainable ground. It has gone on further to hold that the first two mandatory conditions of existence of debt above the pecuniary threshold limit and default thereto stands established.

23. Assailing the impugned order, it is the case of the Appellant that there is no admitted, crystallised operational debt due and payable demonstrated by Respondent No.2. The sums claimed and computed by Respondent No.2 as outstanding qua the Corporate Debtor was not in accordance with the EA and hence not payable. Secondly, Respondent No. 2 had wrongly claimed sums arising out of welfare claims though they do not fall in the category of operational debt. Thirdly, the Corporate Debtor had paid himself sums vastly in excess of the actual dues under the EA. These payments in excess of entitlement cannot be ignored and constituted valid grounds to substantiate the contention that there was no debt, due and payable, by the Appellant. It is also their case that even prior to issue of Section 8 Demand Notice, in response to the resignation letter of Respondent No. 2, the Appellant vide two emails had already denied all salary claims made therein. Therefore, even before the Section 8 Demand Notice stage was reached, the salary claims stood disputed, which the Adjudicating Authority has failed to appreciate.

24. It may be useful at this juncture to look into the two emails sent on the same date by the Corporate Debtor in response to the resignation letter of Respondent No. 2 as reproduced below:

"Thursday, 7 June 2018

Dear Mr. Gaur,

We have received your resignation from SPIN, which we hereby accept.

HR will get into contact to complete the required formalities and settlement of dues."

7 June 2018

Dear Mr. Gaur,

Subsequent to my earlier message accepting your resignation and for records sake, please be informed that we disagree in summary with allegations and claims made in your letter."

25. It is the case of Respondent No. 2 that the second follow-up email was sent by the Corporate Debtor on hindsight to mitigate the impact of their having accepted and acknowledged in the first email that they were ready to settle the dues owed towards salary claims of Respondent No. 2. It is also the case of Respondent No. 2 that the Corporate Debtor had made a bald and summary denial of the dues payable without any substantiation or explanation as to how the payments had been met by them. Because of these reasons the contention of the Appellant that there was no debt due and payable falls flat.

26. To our minds, from a plain reading of the above two emails, which followed each other in a gap of less than an hour on the same day, it is quite clear that the Corporate Debtor had asked Respondent No. 2 to contact HR for settlement of their dues while also disagreeing with the claims raised by Respondent No. 2. Though the intent behind the emails was to indicate willingness to settle the claim amounts, if any, nonetheless it does not tantamount to admission of debt. As regards the plea taken by Respondent

No. 2 that the Corporate Debtor had only given a summary response to the claim raised by them in their resignation letter, we are inclined to agree with the Corporate Debtor that when the Respondent No. 2 had himself made summary and unsubstantiated block-claim without any break-up in their resignation email, the Corporate Debtor cannot be faulted for having summarily denied the dues claimed in the resignation letter. To our minds, the bottom-line is clear that the claims of dues raised by the Operational Creditor was not admitted or accepted by the Corporate Debtor.

27. This brings us to next strand of argument of Respondent No. 2 that when the Corporate Debtor in its Audited Balance Sheet for the period ending 31.03.2019 had admitted the amount of Rs.4,18,577/- as salary payable, it shows that it had unequivocally admitted the liability to clear outstanding salary due and also acknowledged default on their part. Furthermore, the Corporate Debtor had admitted its liability of Rs.24,44,578/- as outstanding towards the Provident Fund. It was also asserted that the Adjudicating Authority had correctly noticed that the Corporate Debtor having failed to show if this due amount of Rs. 28.5 lakhs had been paid to Respondent No. 2, default stands established. On these counts, it has been asserted that an operational debt of more than Rs. 1 lakh had arisen, and payment of the same having been defaulted, the Adjudicating Authority had rightly admitted the Section 9 application. It is also their case that the Corporate Debtor had claimed set off against the admitted liability by adverting to counter-claims which has been rightly rejected by the Adjudicating Authority since claims

and counter-claims cannot be adjudicated by the Adjudicating Authority in terms of the scheme and scope of IBC.

28. Per contra, it is contended by the Corporate Debtor that there is no clear and unambiguous computation of the salary figure made out by the Respondent No. 2 basis the EA. Instead, Respondent No. 2 has relied upon different agreements other than the EA to work out their salary and other dues which could be the basis for working out the due amount and default. It is also contended that when salary advance of Rs. 1.31 cr was already available with Respondent No. 2 as was reflected in the Balance sheet of 2016-2017, the Adjudicating Authority should have taken cognisance of this fact. It has been vehemently contended that Respondent No.2 has tried to mislead the Adjudicating Authority in believing that the salary advance of Rs.1.31 cr was towards meeting arrears of salary entitlement flowing from a hand written paper agreement of 18.09.2013 entered between Respondent No. 2 and Dr. Topf, Group Chairman of the Corporate Debtor. It has also been argued that any further claim under the EA to have been found admissible as debt should have been over and above the advance which had been released to and retained by Respondent No. 2. Assailing the impugned order, it has been contended that these advance payments made in excess of the entitlements have been side-stepped by the Adjudicating Authority and erroneously treated as claims and counter claims.

29. When we look into the issue of default having been committed by the Corporate Debtor, we find that Respondent No. 2 had received salary advance of Rs.1.31 cr in 2017. This advance payment is reflected in their Financial

Statement ending 31.03.3017 as placed at page 101 of Appeal Paper Book (**'APB'** in short). The Respondent No. 2 has neither denied the receipt of the said amount nor assailed this amount appearing in the books of account and has instead submitted that the salary advance of Rs.1.31 cr was for meeting arrears of salary entitlement flowing from a hand written paper agreement of 18.09.2013, which agreement has been hotly contested by the Corporate Debtor. We find that the Adjudicating Authority has not considered the salary advance of Rs.1.31 cr received and retained by Respondent No. 2 even though it finds place in the balance sheet of the Corporate Debtor. Even an amount of Rs. 6.79 cr reflected in the financial statement for 31.12.2018 and 31.12.2019 as recoverable from the Respondent No. 2 has not been taken into cognisance. It clearly appears that the Adjudicating Authority has returned its finding that there is an admitted liability of Rs.28 lakhs on the part of the Corporate Debtor by making a rather perfunctory, cursory and one-sided consideration of the balance sheet of the Corporate Debtor while not taking into account other corresponding entries in the financial statement which reflected the amounts recoverable from Respondent No. 2.

30. Yet again, to look further into the issue of default having been committed by the Corporate Debtor, when we look at the claims made in the Section 8 notice, we find a total debt of Rs. 17.53 cr depicted therein. This amount included Rs.3.98 cr as salary arrears and other contractual benefits; Rs.1.64 cr as Full and Final Settlement of dues; Rs. 11.90 cr as valuation of transfer of India Business and Rs.1.61 cr as TDS collected but not deposited. In the Section 9 application, the same amount of Rs. 17.53 cr has been

claimed with a granular break-up of the entire amount. On perusal of the break-up, it comes to notice that the amount of Rs. 17.53 cr claimed by the Respondent No. 2 included monies not only arising from the EA but also stemming from the Alteration Agreement, the Co-operation Agreement and Agreement for Right to Subscribe to Shares. Further, admittedly on the directions of the Adjudicating Authority, Respondent No. 2 submitted an affidavit dated 09.05.2023, to compute the salary figures basis the EA and approved business plans to arrive at the outstanding dues. In terms of this affidavit, the Respondent No.2 had voluntarily scaled down his claims and limited the amount to Rs. 3.59 cr without prejudice to their claim raised in the Section 9 petition. It is the contention of Respondent No. 2 that even if this computation of 09.05.2023 is considered and salary advance of Rs. 1.31 cr purportedly given by Corporate Debtor is factorised, yet Rs. 2.60 cr still remained payable to them which proves debt and default.

31. Admittedly, the detailed break-up of the monies claimed in the affidavit dated 09.05.2023 is Rs. 1.20 cr for past salary dues; Rs. 56.65 lakhs for Full and Final Settlement; Rs. 27.86 lakhs for Balance Gratuity and Rs. 1.79 cr for TDS not reflected. By their own admission, as recorded by the Adjudicating Authority in paras 6 and 7 of the impugned order, this also included amounts which relate to contractual dues such as LTA, Insurance premiums, bonus, car reimbursement, PF, Gratuity etc other than salary. It is the case of the Corporate Debtor that these amounts which fall in the category of welfare claims and service benefits could not have been claimed in the Section 9 application as these items do not qualify to be operational debt and cannot be

the basis for determining default. Reliance was placed on the judgment of this Tribunal ***Kishore K. Lonkar Vs. Hindustan Antibiotics Ltd.*** in **CA (AT) (Ins) No. 934 of 2021** wherein it is held that initiation of CIRP on claims which fall within the ambit of service benefits/welfare benefits cannot be said to be the intent and objective of the IBC. The Learned Sr Counsel of the Respondent No. 2 however, contended that ***Lonkar judgment*** supra has been misapplied by the Corporate Debtor and that this judgement had created a distinction between amounts being payable during and those payable after cessation of employment. We are afraid that we are not in a position to subscribe to this interpretation since in the ***Lonkar judgement*** supra it has been held that claims like 'LTC' and 'EL encashment', even though they arise during the period of employment, cannot be made a ground for seeking CIRP of a Corporate Debtor.

32. We also find that the Adjudicating Authority in the impugned order has come to the conclusion that the Corporate Debtor was trying to defeat the legitimate claims of the Respondent No. 2 by claiming adjustment of counter-claims which is a subject matter that cannot be adjudicated upon by the Adjudicating Authority in view of its summary jurisdiction. Reliance has been placed on the judgement of this Tribunal in ***Rakesh Kumar Vs. Flourish Paper & Chemicals Ltd.*** in ***CA (AT) (Ins) No. 1161 of 2022*** in support of its stance. We do not have any quarrel with the proposition of law laid down by this Tribunal in ***Rakesh Kumar judgement supra*** wherein it has been held that disputes surrounding claims and counter-claims cannot be adjudicated or determined by the Adjudicating Authority given their summary jurisdiction.

However, this judgement does not come to the rescue of Respondent No. 2 since the distinguishing fact of that case was that the counter-claim was raised in respect of compensation claims suffered on account of supply of poor quality of goods. Even the other judgment of this Tribunal relied upon by Respondent No. 2 in ***Deepak Gupta judgement supra*** is not applicable since the counter claim in that case was sought on grounds of alleged fabrication and falsification of invoices.

33. On the other hand, the judgement relied upon by the Appellant of this Tribunal in ***Greymatter Entertainment Pvt. Ltd. Vs. Pro Sportify Pvt. Ltd.*** in ***CA (AT) (Ins) No. 1043 of 2021*** which was subsequently upheld by the Hon'ble Supreme Court of India in SLP (Civil) Dy. No. 20506/2023 stands in good stead in that it held that when it is clear from material on record that there are claims and counter-claims with respect to the amounts to be paid, the defence raised on this ground cannot be held to be spurious or a mere bluster. Present is not a case where the Corporate Debtor has harped on a set-off claim. In the present factual matrix, the Appellant is contending on the strength of financial statements that Respondent No. 2 has received more than what he is entitled to receive as per the EA. The Adjudicating Authority ought not to have brushed this contention aside by treating it as part of a plethora of claim and counter-claims and turn a blind eye to the entries in the financial statements adverted to by the Corporate Debtor. This critical misappreciation of facts has led the Adjudicating Authority to the erroneous conclusion that default had been committed by the Corporate Debtor. We are satisfied that the balance amount claimed as operational debt has been

disputed by the Corporate Debtor and no default has been admitted on this count. We are of the view that IBC should not be used as a recovery mechanism. The claims asserted by the Respondent No.2 are in the nature of contractual claims which require to be adjudicated in an appropriate civil court.

34. This brings us to the next pertinent issue on how the Adjudicating Authority has dealt with the issue of pre-existing dispute. The impugned order at para 32 shows that the Adjudicating Authority that no valid disputes were raised prior to receipt of the statutory demand notice. For convenience, we proceed to extract the relevant para which reads to the effect:

> *"32. Be that as it may, this does not detract from the fact that the criminal complaints, EoW Complaints and the alleged sett-off/ counter claims by the Corporate Debtor against the Applicant's claim are only raised after the issue of the Statutory Demand Notice dated 20.06.2018. Accordingly, we are not inclined to agree that a valid dispute has been pointed out by the Corporate Debtor prior to receipt of statutory demand notice with regard to the quality of services provided by the Applicant and which, would constitute a pre-existing dispute before the issuance of the Demand Notice. In sum, no real pre-existing dispute is discernible and the email relied upon by the Corporate Debtor is just a bald statement of 'summary' 'disagreement' to the points raised by the Applicant in his letter of resignation. This feeble statement cannot be taken as a dispute as it is not supported by any credible evidence whatsoever. Pertinently, Hon'ble Supreme Court in Mobilox supra, para 51, laid down that an assertion of fact unsupported by evidence is not a dispute. Hence, in the instant case, the third condition regarding Pre-Existence of Dispute before the issue of the Statutory Demand Notice is answered in negative."*

35. Coming to the various criminal complaints which have been adverted attention to by the Corporate Debtor to signify disputes between the two parties, we notice that a criminal complaint was filed on 07.09.2018; a FIR

was registered on 14.11.2018 and a complaint was lodged with EOW, Delhi. In addition, reference has been made to a suit for recovery filed on 10.04.2022 based on the findings of a Special Investigative Report of 25.09.2019. We also agree with the Adjudicating Authority that these do not qualify as pre-existing disputes. Therefore, we do not wish to take cognisance of these disputes as such since these purported developments did not predate the Section 8 notice.

36. Be that as it may, at this stage, it may be pertinent to recall the statutory provisions of Sections 8 and 9 which have been referred to in Paras 16 and 17 above. From a plain reading of the said statutory provisions, it is clear that the existence of dispute and its communication to the Operational Creditor is statutorily provided for in Section 8. In the present case, it is an undisputed fact that Section 8 demand notice was issued by the Operational Creditor-Respondent No. 2 on 20.06.2018 and in response a notice of dispute was also raised by the Corporate Debtor on 29.06.2018.

37. It may be useful to peruse the notice of dispute to find out whether the debt and default was admitted or not by the Corporate Debtor and whether any disputes related to the debt amount was raised therein. The relevant extracts are as placed below:

> *5. However, during the course of employment with our Client, it appears that the performance of your Client gradually deteriorated and the same unequivocally affected the growth of our Client. During the years of your Client's management, our client was suffering a financial crisis and was unable to pay either its employee or contracting parties or banks etc. It also came to the knowledge of our Clients during the course of 2018 that various monies had been and were being siphoned off and diverted by your Client to himself or entities, which were directly or indirectly owned and controlled by your Client.*

6. Your Client was at all times aware of the extreme severity of the financial crisis of SPIN. Our Clients also demanded answers and directed your Client to come up with an immediate plan to revive the business of SPIN. It appears that instead of comprehending the Situation and making efforts towards SPIN as its CEO, your Client started raising frivolous and false disputes pertaining to his employment and remuneration in SPIN. It may be noted that apart from his professional attitude, your Client also became rude and arrogant to his seniors and other stakeholders.

7. Further, when answers were demanded by our Clients on the precarious situation of SPIN and when it came to the knowledge of your Client that our Client has a hint of the embezzlement and siphoning off monies by your Client, your Client in utmost hurry resigned from the services of SPIN on 07.06.2018. In the said resignation letter, your Client again raised various frivolous disputes pertaining to his remuneration. The said resignation was accepted by our Clients vide emails dated 07.06.2018 at 3.47 p.m. Exactly, 54 (fifty four) minutes later, on account of abundant caution, our Clients vide email dated 07.06.2018 at 4.41 pm. Clearly stated that it was only accepting the resignation by your Client and not the vexatious allegations made by your Client. It is pertinent to note here that while only accepting the resignation of your Client, our Client denied all the allegations and claims made in the resignation letter dated 07.06.2018.

8. However, our Clients were shocked and surprised when the present Demand Notice, only after 13 days of your Client's resignation, making frivolous claims and baseless allegations was received by our Clients. It may be noted that during these 13 days no efforts have been made by your Client to reach out to the accounts department of our Clients to settle his accounts. It appears that your Client has not come out clean in the said Demand Notice and has only brought miniscule facts to your notice. The said act of your Client only shows his malafide intentions and ill motives.

9. As stated above, the relationship between the parties herein is governed only by the Employment Agreement and no other documents/agreement, whatsoever. Our Clients have at all times complied and performed all their obligations, duties and responsibilities as provided under the Employment Agreement. On the other hand, your Client has miserably failed to perform his obligations. The acts of your Client have not only let SPIN being systematically squeezed but also brought it to a position where it is unable to pay its debts. Not only did your Client hamper the growth and success of SPIN, your Client most importantly abused his position of CEO of the

Company and his signing authorities for bank accounts of SPIN to make unapproved payments to himself and related parties thereby causing breach of trust and cheating. In fact, the acts of your Client have subjected our Clients and SPIN to unnecessary financial liability. The acts of your Client are prejudicial not only to the interest of SPIN but also all others stakeholders directly/indirectly involved with the affairs of SPIN.

10. When such acts of your Client came to the knowledge or our Clients, it suggested for an investigation and thorough forensic audit of the finances of SPIN. Surprisingly, your Clients resignation comes at a time, when our Clients were in the process to order investigation in the nefarious activities of your Client. You may note here that a prima facie investigation and forensic audit reveals that the financial transactions of your Client reflect siphoning off of the funds of SPIN. In fact, it also appears that your Client has taken more from SPIN than what was admitted/acknowledged under the Employment Agreement. Our Clients are in the process of finalising the forensic audit of the Company. Once the correct financial position is brought forward, our Client reserves their right to file appropriate claim against your Client 'for recovery of the excess money taken from SPIN. Our Clients also reserve their right to initiate appropriate criminal action against your Client for criminal breach of trust, cheating etc.

11. It is stated that the present Demand Notice is unwarranted and untenable. Our Clients out rightly deny that any amount or claim is pending or has been accepted by our Client, as alleged or at all. It is whimsical to presume as reflected in the entire tenor of the Demand Notice that any amount has been admitted by our Clients. In fact, two emails within a span of 54 minutes have been termed as an after-thought. It is a matter of common sense that a time gap of 54 minutes can never be an after-thought. It is reiterated that vide its emails dated 07.06.2018, our Clients only approved and accepted the resignation of your client. By no stretch of imagination can it be stated that the claims have also been accepted. On the contrary, our Clients dispute each and every claim made by your Client in the said Demand Notice. You are requested to note that in its email dated 07.06.2018, our Clients have apprised your Client that the full and final settlement of dues is pending, However, the same shall also be only undertaken once our Client receives the final forensic audit report.

(Emphasis supplied)

38. A glance at the above notice of dispute shows that the Corporate Debtor had in a detailed and exhaustive manner outlined the various disputes ranging from financial crisis suffered by the Corporate Debtor due to mismanagement of Respondent No. 2, raising of frivolous and false disputes by Respondent No. 2 pertaining to his employment dues and remuneration, abuse of position of office held by Respondent No. 2 in financial squeezing the Corporate Debtor including siphoning of funds, institution of investigation and forensic audit to pave the way for initiating criminal action, if necessary besides denial of claims raised by Respondent No. 2 in the demand notice.

39. We also find that communications were exchanged between the Corporate Debtor and Respondent No. 2 prior to issue of Section 8 notice which show that there were seeds of discord and dispute between the two parties. Two sample letters are as placed below out of a host of such correspondence exchanged between them which find place at pages 656-680 of the APB.

From: Henri-Jacques

To: Pavan Gaur

Dated: 08, May 2018

Subject: My employment with you.

Dear Pavan,

Let me clarify the extreme severity of the situation as a result of 6 years of your management, not just to SPIN but to all parties involved.

1. Today, it seems that SPIN can pay neither employees nor suppliers nor landlord nor owners nor the state/ central government nor banks, mostly already for quite some time. SPIN cannot even deliver the contractual obligations to our customers. This starkly contradicts

the way you reported about SPIN. Mr. Kuhnreich is working on establishing the facts.

2. The very basis of any agreement between you and me has always been that payments to you were to come from SPIN out of its operative profits and cash flows. No money from the owners was ever intended to flow to you. I also disagree with some of your below claims but this is clearly not an issue right now.

3. You had bankrupted SPIN some more years ago. Mrs. Carstensen saved SPIN and I gave you a second chance. There is no third chance if SPIN fails now. A bankrupt SPIN cannot pay anything.

4. Averting bankruptcy is our all TOP PRIORITY. Supporting Mr. Kuhnreich towards this goal must be given your absolute utmost immediate efforts.

I strongly believe that SPIN can succeed in this, but it will only possible by a joint effort of EVERYONE. Do your part in saving SPIN.

All our love and compassion from Jeanne and me.

From: Pavan Gaur

To: Henri Jacques

Dated: 08 May, 2018

Subject: My employment with you.

Dear Dr Topf and Mr. Kuhnreich

I write in furtherance to our discussions on our meeting during you visit to India between May 1st – 4th, 2018.

It has been verbally announced to me that I am no longer the CEO – Asia Pacific and that the person who has accompanied you, Mr Jurgen Kuhnreich, has been appointed as the new CEO-Asiá Pacific to be stationed in India. I have additionally been informed that the decision has been taken based on the fact that the Employment Agreement has not been renewed and has not been signed by me. You have asked me to report to him in a possible new position of Sales Director. You have also informed me that this shall result in a revised salary compensation. While I have asked for new roles and responsibilities, I am yet to receive

any information on this. Also, all the above has been verbally done with no written communications. The same has also been communicated within the Company through the assembly meeting of the workers in the plant at NOIDA on May Ist and Pondicherry plant on May 2nd, 2018. I have offered and agreed to support him to the best of my capabilities. On May 3rd, we met in the morning to understand how my past dues/ outstanding from Schneider International Holding GmbH and Schneider Prototyping India Pvt Ltd. (SPIN) shall be paid. It was confirmed by you that the company would pay the following dues:

-Valuation for transfer of business from my past company of Euro 825,000 as on March 31st, 2013 (then valued at approximate of Rs 574.11 Lacs) and compounded with interest (prevalent bank lending rate in India) to be calculated on the outstanding amount.

- Cash Salary of Euro 120,000 (then valued at approximate of Rs 8.35 Lacs monthly) per year with perks extra effective from September 19th, 2013 and in line with the earlier Employment Agreement.

These had already been jointly agreed, signed and accepted on September 19th, 2013 through a joint signed agreement made out in handwriting.

It has been offered that the pending amount shall now be drawn from the cash generation of SPIN with the understanding that it would be the surplus over the operating expenses and then thereafter to be shared on 50:50 between me and the promoters/ stake holders of SPIN.

Please note that the amounts outstanding against these as on April 30th, 2018 are as follows:

- Valuation for transfer of business from my past company: Rs 1042.87 Lacs approximate

- Salary pending of Rs 103 Lacs approximate which has been unpaid since several months. It was also accepted by you that my offer of 24.9% equity in SPIN shall be made available from April 1st, 2018. This was agreed during our joint meeting in Mainz, Germany along with Dr Proessl, the current CEO and Mr Kleinschmidt, the then CFO of Schneider International Holding GmbH last year.

The machinery owned by me and given to SPIN on rent by me is being assumed to be continued on the current rental management fees of Rs 10,76,023 + applicable taxes.

I write for confirmation that the settlement of the dues shall be responsibility of Mr Juergen Kuenreich on behalf of the companies and that he has been appraised of this and which has been accepted by him as his responsibility.

Thanking you,

PAVAN GAUR

40. Such glaring disputes cannot be brushed aside as mere management-related disputes as has been asserted by Respondent No. 2. We find that besides attributing a grave charge against Respondent No. 2 for bankrupting SPIN, the Corporate Debtor had effectuated revision of the role, responsibilities and salary compensation of Respondent No. 2. More significantly, the disputes raised in these letters are central to the payments claimed by Respondent No. 2 and had a bearing on the computation of outstanding dues arising out of the hand written agreement of 18.09.2013 which has been the bone of contention between the two parties. These disputes, raised prior to demand notice, were germane to deciding whether there was a debt and if the debt was disputed by the Corporate Debtor. The present is therefore not a case where there is an undisputed debt for which Corporate Debtor can be brought under the rigors of CIRP. Triggering the drastic consequences of CIRP on the Corporate Debtor on the basis of debt and default which is mired in pre-existing disputes, in our considered view, is not acceptable.

41. It is surprising to find that the Adjudicating Authority has confined to criminal complaints and investigations which arose post the Section 8 demand notice while blatantly glossing over the disputes raised in the Notice

of dispute. There is no mention of the series of correspondence exchanged between the two parties prior to the issue of demand notice regarding their difference of opinion on the outstanding salary dues claimed by the Respondent No. 2. That these letters clearly preceded the demand notice, establish evidence of dispute between the two parties. These letters along with the notice of dispute provide sufficient foundation of genuine disputes between the two parties which cannot be disregarded as patently feeble.

42. It is well settled that in Section 9 proceeding, there is no need to enter into final adjudication into the disputes between the parties regarding operational debt. In terms of the ***Mobilox judgement supra,*** all that the Adjudicating Authority was required to do was to see whether any notice of dispute was raised by the Corporate Debtor and take a call on the plausibility of these disputes which in the present facts of the case the Adjudicating Authority has hopelessly failed to do. Disputes once raised and found plausible, they require detailed consideration which is beyond the ambit of the Adjudicating Authority since IBC only provides for summary proceedings. For such disputed operational debt, Section 9 proceeding under IBC cannot be initiated at the instance of the Operational Creditor.

43. In the light of the reasoning stated above, we are of the considered opinion that the Adjudicating Authority committed serious error in admitting Section 9 application. The impugned order initiating CIRP of the Corporate Debtor is set aside. The Corporate Debtor is released from the rigours of CIRP with immediate effect. The Resolution Professional shall however be paid his fees/expenses by the Appellant. The Registry is directed to take appropriate

action without any delay to refund the amount which was deposited by the Appellant in Fixed Deposit Receipt in pursuance of the interim order of this Tribunal dated 10.11.2023. We however add that we are not expressing any views on the merits of the disputes raised and in the event the Respondent No.2 is desirous of seeking alternative legal remedy, in the interest of justice, it shall remain open to raise all contentions before the appropriate legal forum as permissible in law. The appeal is allowed as above. No costs.

[Justice Ashok Bhushan]
Chairperson

[Mr. Barun Mitra]
Member (Technical)

Place: New Delhi
Date: 06.08.2024

Harleen Kaur