2

IN THE NATIONAL COMPANY LAW TRIBUNAL, SPECIAL BENCH – I, CHENNAI

CP/IB/293/CHE/2021

(filed under Section 9 Rule 6 of the Insolvency and Bankruptcy (Application to adjudicating Authority) Rules, 2016)

In the matter of ***VA Tech WABAG Limited***

ABB INDIA LIMITED
(Erstwhile ABB Limited)
Rep. by its Authorized Signatory
Mr. Manjunath K Shetty
Plot No. 5 & 6, 2nd Stage,
Peenya Industrial Area IV, Peenya,
Bengaluru – 560 058

... Operational Creditor

– Vs –

VA TECH WABAG LIMITED
WABAG House, No.17,
200 Ft Thoraipakkam Pallavaram Main Road,
Sunnambu Kolathur,
Chennai – 600 117

... Corporate Debtor

CORAM:

SANJIV JAIN, MEMBER (JUDICIAL)
SAMEER KAKAR, MEMBER (TECHNICAL)

For Petitioner	:	*Satish Parasaran, Senior Advocate* *Swarnam J Rajagopan, Advocate*
For Respondent	:	*R. Sankaranarayanan, Senior Advocate* *Ramasamy Meyyappan, Advocate*

Order pronounced on 5th July 2023

ORDER

(Hearing conducted through VC)

***Per:* SAMEER KAKAR, MEMBER (TECHNICAL)**

Under Adjudication is an Application which has been filed by **ABB India Limited** (hereinafter referred to as *'Operational Creditor"*) under Section 9 of the Insolvency & Bankruptcy Code 2016 (in short, 'IBC 2016') r/w Rule 6 of the Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016 against **VA Tech WABAG Limited** (hereinafter referred to as *'Corporate Debtor'*), to initiate the Corporate Insolvency Resolution Process against the Corporate Debtor, declare a moratorium and appoint Interim Resolution Professional.

2. Part-I of the Application sets out the details of the Applicant. It is stated that the Operational Creditor is a Public Limited Company. In Part-II of the Application, it is stated that the Corporate Debtor is a Public Limited Company incorporated under the provisions of the Companies Act, 1956 and the registered office of the Corporate Debtor is situated at WABAG House, No.17, 200 Ft Thoraipakkam Pallavaram Main Road,

Sunnambu Kolathur, Chennai – 600 117. In Part III of the Application, it is stated that the Operational Creditor has not proposed the name of the IRP and left it to the discretion of this Tribunal to appoint the IRP.

3. In Part IV of the Application the Operational Creditor has claimed a total sum of Rs.10,85,15,671/- (Rupees Ten Crore Eighty-Five Lakhs Fifteen Thousand Six Hundred and Seventy-One Only) as the default amount which is due and payable by the Corporate Debtor.

4. **CASE OF THE OPERATIONAL CREDITOR**

4.1. It is stated that the Corporate Debtor had placed Purchase Order bearing No.MBG-P0-171714/10P84 dated 09.03.2015 including amendments issued in respect thereof for a project viz. APGENCO – RTTP – TSL" on the Operational Creditor for a consideration of a sum of Rs.65,06,34,000/- and also a Work Order No.MBG-P0-17298/10P84 dated 09.03.2015 including amendments issued in respect thereof for a sum of Rs.3,86,13,638/-.

4.2. The nature of work was Designing, Engineering, Manufacture, procurement, inspection, P&F, Transportation up to the site of complete electrical DOP, packages by APGENCO for 600 MW RTPP Stage – IV, Unit No.6 and erection, testing, commissioning and handing over of complete electrical DOP packages.

4.3. Along with the Purchase Order and Work Order, 3 sets of Annexures containing the General Terms and Conditions, scope, price and delivery schedule and commercial terms and conditions are enclosed.

4.4. It is stated that the Operational Creditor duly and diligently proceeded with the execution of the works. During the progress of work, the Operational Creditor had requested for extension of time since there were hindrances and delays that prevented the Operational Creditor from completing the works within the scheduled 15 months' time period. It is stated that the actual reason for seeking extension was due to delays in issuing advance payments, delays in giving inputs and crucial approvals and delay in approving variations on the part of the Corporate Debtor.

4.5. It is stated that the Corporate Debtor vide letter dated 26.10.2016 granted extension of time upto 31.03.2017 and stated that price variation would not be applicable for the extended time. It is stated that the delay on the part of the Corporate Debtor continued unabated and therefore there was a necessity to seek further extension of time vide letter dated 15.11.2017 upto June 2018. It is stated that the Operational Creditor progressed with the work and a further extension of time was granted upto 31.03.2020 vide letter dated 31.10.2019. At that stage, substantial works (approx. 95%) were completed and there were only few works which were left to be executed that too on account of the Corporate Debtor's failure to provide the requisite work fronts for carrying out the balance works.

4.6. It is stated that at this stage, the Operational Creditor brought to the notice of the Corporate Debtor about the non

– payment of the Retention monies and sought for the same. In this regard, officials of both the parties met on 31.01.2019 and jointly executed a reconciliation statements which stipulates as under:-

(i) That the Corporate Debtor owes money to the Operational Creditor

(ii) That the Corporate Debtor admits and acknowledges that the Retention Moneys to the tune of Rs.6,66,40,067/- is to be paid to the Operational Creditor

(iii) On the other payments, the parties agree to reconcile further.

4.7. It is stated that there has been dues towards the Retention monies that has been admitted and acknowledged by the Corporate Debtor, however, despite repeated reminders and letters dated 23.11.2018, 16.05.2019, 14.11.2019, there has been no efforts on the part of the Corporate Debtor to settle this admitted and acknowledged dues. It is stated that the sums are admitted by the Corporate Debtor and the Operational Creditor is entitled to the monies as these are payments deducted from the bills raised by the Operational Creditor.

4.8. It is stated that 95% of the works have been completed and balance could not be taken up due to non-availability of work, which is not attributable to the Operational Creditor. It is stated that vide letter dated 02.04.2018, Andhra Pradesh Power Generation Corporation Limited, who is the Principal Employer of the project has confirmed that the capacity test of the said project has been conducted on 25.03.2018 in the presence of the Corporate Debtor, being the contractor. It is stated that in the said testing, the Andhra Pradesh Power Generation Corporation Limited has declared the Commercial Operation date as 29.03.2018. It is stated that the Commercial Operation date signifies that the works have been executed by the Operational Creditor in accordance with the contractual terms and to the fullest satisfaction of the parties concerned.

4.9. It is stated that the reconciliation statement dated 31.01.2019 reflects the liability of the Corporate Debtor in clear and categorical terms and hence there can be no dispute or demur about the same. It is stated that the Corporate Debtor has admitted and acknowledged for the repayment of the Retention Moneys.

4.10. It is stated that the Operational Creditor on several occasion followed up with the Corporate Debtor on the admitted dues but there was no response whatsoever. Hence, the Operational Creditor issued a Demand Notice as stipulated under Section 8 of IBC, 2016 to the Operational Creditor in Form – 3 on 17.09.2021, which was duly served upon the Corporate Debtor on 18.09.2021.

4.11. It is stated that in response to the same, the Corporate Debtor vide its reply letter dated 27.09.2021 raised various untenable and manufactured defences for the purpose of defeating the legitimate claim of the Operational Creditor. It is stated that the Corporate Debtor has raised the defences pertaining to non – issuance of completion certificate, non – submission of operation and maintenance manual, which is an afterthought since the same were not raised during the reconciliation accounts.

5. CASE OF THE CORPORATE DEBTOR

5.1. The Corporate Debtor rebutted the claim made by the Operational Creditor and stated that as per the terms contained in the Purchase Order, the Operational Creditor was required to execute their scope of work within a period of 15 months, however there was considerable delay on the part of the Operational Creditor in executing the Project. Further, in addition to delay caused by the Client in handing over the site, it resulted in the price variation of the Purchase Order coming into effect.

5.2. It is stated that 31.03.2020 was the final extension of time which was granted by the Corporate Debtor to the Operational Creditor and about 20% of the works were yet to be completed. It is stated that neither the Corporate Debtor nor their Principal Employer viz. APGENCO has provided the completion certificate nor they have issued any status certificate to the extent of completion amounts to be paid. It is stated that the Operational Creditor is all along in the habit of obtaining a completion certificate which has not been obtained in the present case, since the work is yet to be completed.

5.3. It is stated that as per the payment terms in the Purchase Order, the Retention amounts in the latter clauses would only be payable upon the completion of the works by the Operational Creditor, duly certified by the Engineer in charge, accompanied with a bank guarantee provided by the Operational Creditor towards the specified sum, for which invoice has to be raised by the Operational Creditor to the Corporate Debtor.

5.4. It is stated that as per the Reconciliation Statement that was executed with the concurrence of both the parties on

31.01.2019, certain sums were payable to the Operational Creditor. It was never in dispute that the retention sums were due and payable to the Operational Creditor, however as of now, the said retention amount is not due and payable. It is stated that as per the letter dated 14.11.2019, the Operational Creditor is required to submit / raise the 1st retention invoice, which will be certified and based on which, the Operational Creditor will be able to submit its commercial documents through Operational Creditor's bank as per the established process. The Operational Creditor being aware of the this fact has not raised such an invoice till date.

5.5. It is stated that the Operational Creditor has sought for a payment of interest on the purported and alleged outstanding amount. It is stated that neither the Purchase order nor the General Terms and Conditions shared by the Operational Creditor provide for interest to be paid for any delayed payment and in the absence of which, the

Operational Creditor is not entitled to claim interest, *arguendo* even assuming the principal amount is payable.

5.6. It is stated that in response to the Form – 3 notice, the Corporate Debtor vide letter dated 27.09.2021 had stated that the Operational Creditor failed to complete the performance of obligations under the Purchase Orders and that the payment obligations would only come into play upon issuance of Completion Certificate and submission of Bank guarantee. It is stated that in the present case, the Operational Creditor has neither obtained a Completion Certificate nor submitted the bank guarantee. It is stated that the works at site are still pending and ongoing and in light of the same, any claim for the retention amount would be premature.

5.7. It is stated that the amount claimed by the Operational Creditor is not in default, but in dispute. It is stated that the Corporate Debtor herein has never certified the completion of work by issuance of a completion certificate which was to be accompanied by a Bank Guarantee issued by the Operational Creditor and the Operational Creditor has also not raised any retention invoice to that extent.

5.8. It is stated that the facts in question on causes for delay in the work, alleged completion of the work giving rise to the claim for payment, are the matters in dispute and are issues that can be suitably dealt with in accordance with the arbitration clause contained in the purchase order. It is stated that the present claim of the Operational Creditor is premature and baseless whereby the corresponding liability that would give rise to its claim, has not been performed and not certified by the Corporate Debtor herein.

5.9. It is stated that the Operational Creditor has no grounds whatsoever to seek any reliefs under IBC, 2016 and the present Application is a fishing expedition, the Operational Creditor has undertaken by way of forum shopping, without resorting to the reliefs available to the Operational Creditor before the Civil Court or the Arbitral Tribunal, as the case may be, where the dispute between the Operational Creditor and the Corporate Debtor would have to be adjudicated. It is stated that the Operational Creditor knows fully that it is in breach of its obligations under the Purchase orders, that is why, without recourse to the remedy available before the Civil Court / Arbitral Tribunal, the Operational Creditor has embarked on this expedition to arm twist the Corporate Debtor into parting with the payments. It is stated that the Corporate Debtor seeks dismissal of the present Application.

6. FINDINGS OF THIS TRIBUNAL

6.1. Heard the submissions made by the Learned Senior Counsel for both the parties and perused the records including the pleadings placed on record.

6.2. From the submissions made by the Learned Senior Counsel for both the parties, the issues which arise for consideration before this Tribunal are;

(i) Whether the claim of the Operational Creditor would qualify to be an 'operational debt' and if so, whether the said operational debt has become 'due' and 'payable' by the Corporate Debtor under the provisions of IBC, 2016.

(ii) Whether there is any pre-existing dispute in relation to the claim made by the Operational Creditor as against the Corporate Debtor before the issuance of the Demand Notice.

6.3. In order to better address the issue in hand, it is imperative for this Tribunal to go through certain clauses in the Terms & conditions of the Purchase order, which are extracted hereunder;

For Purchase Order bearing No.MBG-P0-171714/10P84

Clause 5: Terms of Payment:

"The payment terms shall be as under:

a. 5% of the contract value shall be released as interest free advance within 15 days from the date of submission of ABG of equivalent value valid till the completion of the supply.

b. 85% of the contract value, with applicable taxes and duties on pro rata basis as applicable and agreed shall be released against progressive supplies as per billing schedule and through confirmed, irrevocable, divisible LC with a usance period of 120 days from date of receipt of materials at site.

c. 5% payment of the contract value against pro-rata completion of erection job and shall be released within 45 days from certification by our WABAG site incharge as per billing schedule supervision, this amount shall be paid to ABB against issue of equivalent bank guarantee valid till warranty period.

d. 5% of the contract price will be payable on satisfactory completion of supervision of commissioning and handing over of the plant duly certified by WABAG/Consultant/Client and on submission of Performance bank guarantee valid till completion of defect liability period.

e. Commercial operation of the Electrical or any delay in Electrical commissioning and handing over beyond 180 days, from the scheduled commissioning/completion date, for the reasons not attributable to ABB, shall be considered as deemed commissioned and handed over.

For Work Order No.MBG-P0-17298/10P84

Clause 5: Terms of Payment:

"The payment terms shall be as under:

a. 85% through 120 days LC on Pro-rata completion of work & submission of RA bill against "certification of erection" by site in charge.

b. 5% against completion of EBOP installation work

c. 10% on commissioning & handing over duly certified by site in charge & Project Manager as elsewhere defined in the award.

6.4. As per the terms of the Purchase order and Work Order the scope of work combined together was to be performed within a period of 15 months, ending May 2016. However, extension of time was granted by the Corporate Debtor to the Operational Creditor from time to time and recently till 31.03.2020.

6.5. The claim of the Operational Creditor in the present petition pertains only to the Retention amount. It is seen that the Operational Creditor and the Corporate Debtor had reconciled their accounts and accordingly a reconciled statement was duly signed by both the parties on 31.01.2019. In the said reconciliation statement, a sum of Rs.6,66,20,067/- is shown as 10% Retention amount. The Learned Senior Counsel for the Operational Creditor has submitted that the said 10% Retention amount is legally due and payable by the Corporate Debtor and in spite of sending numerous letters to the Corporate Debtor, there is no response whatsoever.

6.6. Be that as it may, on 20.08.2020, the Operational Creditor had issued a letter to the Corporate Debtor stating that on account of Covid – 19 pandemic and due to nationwide lockdown imposed by the Central / State Governments, they are invoking the Force Majeure Clause 26 in the Contract. It was also stated in the letter that there have been no improvements in the site conditions thereby further impeding the efforts of the Operational Creditor in carrying out the site works. This letter would show that there are works still pending at the site for the Operational Creditor to be completed.

6.7. The stance of the Operational Creditor that as per the Reconciliation statement, a sum of Rs.6,66,20,067/- is shown as 10% Retention amount and as such the same has become due and payable does not hold any water since the Clause 5 of the General Terms & Conditions of the Contract stipulates the following:

> "c. 5% payment of the contract value against pro-rata completion of erection job and shall be released within 45 days from certification by our WABAG site incharge as per billing schedule supervision, this amount shall be paid to ABB against issue of equivalent bank guarantee valid till warranty period.

d. 5% of the contract price will be payable on satisfactory completion of supervision of commissioning and handing over of the plant duly certified by WABAG/Consultant/Client and on submission of Performance bank guarantee valid till completion of defect liability period."

As per Clause 5 of the General Terms & Conditions, 5% payment of the contract value shall be paid within 45 days after completion of the erection job and a **certification by WABAG** site incharge. The remaining 5% of the Contract price will be paid on completion of supervision of commissioning and handing over of the plant duly **certified by WABAG** and on submission of the Performance Bank Guarantee.

6.8. Aforesaid two clauses of the General Terms and Conditions make clear that only **after completion of the work** and **after obtaining a certificate from WABAG,** and by raising a proper invoice, the amount is required to be paid by the Corporate Debtor. However, in the present case, at the first instance, the Operational Creditor has miserably failed to establish that it has fully completed the work let alone placing on record the Completion Certificate from WABAG.

6.9. The Operational Creditor in para 9 of Part – IV of the Application has stated as follows;

> *"It is stated that **95% of the works have been completed** and the balance could not be taken up due to non – availability of fronts, which is not attributable to the Applicant herein….."*

Thus, it is admitted by the Operational Creditor that only 95% of the work alone has been completed. While this being the fact, without completing the entire work and without obtaining the completion certificate from WABAG as stipulated under Clause 5 of the General Terms and Conditions, the Operational Creditor cannot claim that the 10% Retention amount has become due and payable.

6.10. Further, in the additional affidavit filed by the Corporate Debtor, it is seen that the Corporate Debtor had approached the Principal Contractor viz. APGENCO and got an extension of the project, to be completed on or before 31.03.2024. It is also seen that the Corporate Debtor has appointed a third – party contractor viz. Narmada Engineering Works to undertake the balance works that had originally been entrusted to the Operational Creditor. The Purchase order issued on the Narmada Engineering Works dated 27.02.2023 is also annexed to the typed set. All these go on to show that the Operational Creditor has not completed the works undertaken by it as per the Purchase order and as such the amount claimed by the Operational Creditor would not become 'due' and 'payable' as per the provisions of IBC, 2016.

6.11. In this regard, this Tribunal finds its apt to refer to the Judgment of the Hon'ble NCLAT in the matter of **Vinod Mittal Vs. Rays Power Exports & Anr.** in *Company Appeal (AT) (Insolvency) No. 851 of 2019* wherein it was held 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."

6.12. Further, the Hon'ble NCLAT in the matter of **M/s. Kuntal Construction Pvt. Ltd. Vs. M/s Bharat Hotels Ltd** in

Company Appeal (AT) (Insolvency) No. 542 of 2020 has held as under;

> 18. We have heard the learned counsel for the parties and perused the record. The email correspondences clearly showed that the operational creditor was intimated about the retention money being adjusted on account of defects in the Work Order. It is clearly laid down by the Hon'ble Supreme Court "IBC is not intended to be substitute to a recovery forum and whenever there is existence of real dispute, the IBC provisions cannot be invoked."
>
> 19. The definition of the word dispute provided under the code was well elaborated and explained by Hon'ble Supreme, in the case of re. Mobilox Innovation Pvt. Ltd. vs. Kirusa Software Pvt. Ltd in the following words:
>
>> That vide Para 40 of the judgment – "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. 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."

The intent of Legislature is very vital for interpreting any law, which can be well deduced from the words of Section 8(2)(a) of I&B Code 'existence of a dispute if any'. It can be easily inferred that dispute shall not be limited to instances specified in the definition as provided under Section 5(6), as it has far arms, apart from pending Suit or Arbitration as provided Under Section 5(6) of IBC. The IBC is not a substitute for a recovery forum. Section 9 of the IBC makes it very clear for the Adjudicating Authority to admit the application "if no notice of dispute is received by the Operational Creditor and there is no record of the dispute in the information utility." Whereas, on the other hand, Section 9 also states that the Adjudicating Authority reject the application so filed "if the Operational Creditor has received a notice of a dispute from the Corporate Debtor".

20. From the above we can conclude that since there was a dispute existing prior to the issuance of Section 8 notice, the insolvency provisions cannot be invoked. The email communication of the Operational creditor dated 23.01.2016 states about operational creditor having knowledge of retention money being adjusted. <u>Whether the corporate debtor was entitled to adjust the retention amount are disputed question of law and fact and shall be decided by the appropriate forum.</u>

21. We also want to clarify that no one can take recourse that they have not been communicated the Judgment. It should be the duty of the counsel to keep a track after the matter is reserved for pronouncement. This is not a valid ground for requesting the condonation of delay. There should be a sufficient cause for the delay and no one can claim condonation as a matter of right. However, as we proceeded with the matter and heard both the parties in full length, the delay is impliedly condoned in this case.

22. We find no merit so as to interfere in the impugned order dated 30.01.2020 passed by the Adjudicating Authority in C.P. IB-49(ND)2019. Hence the appeal is dismissed. No order as to cost.

(emphasis supplied)

6.13. The Hon'ble Supreme Court in **Mobilox Innovations Pvt. Ltd. Vs. Kirusa Software (P) Limited;** *2017 1 SCC Online SC 353* has held that the 'existence of 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 and observed as follows;

"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.."

At paragraph 51 it is held:

> "51. ......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."

6.14. Thus, from the documents placed on record, it is reasonable to conclude that the Operational Creditor has not completed the works undertaken by it as per the Purchase order and as such the amount as claimed by the Operational Creditor would not become 'due' and 'payable' to invoke the provisions of the contract between the parties. Hence, in the absence of 'operational debt', there cannot be any 'default' on the part of the Corporate Debtor. It is also seen that there exists certain dispute between the parties in relation to the amount which is required to be paid. Thus, there exist a plausible dispute between the parties.

6.15. The issues no. (i) and (ii) are answered accordingly.

7. In view of the dispositive reasoning stated above, and also by taking into consideration the decision of the Hon'ble Supreme Court in **Mobilox Innovations Pvt. Ltd.** *(supra)* the present Application filed by the Operational Creditor under Section 9 of IBC, 2016 seeking initiation of CIRP as against the Corporate Debtor is liable to be dismissed and accordingly stands **dismissed**. No order as to costs.

Sd/-
SAMEER KAKAR
MEMBER (TECHNICAL)

Sd/-
SANJIV JAIN
MEMBER (JUDICIAL)

Raymond

Order pronounced under Rule 151 of NCLT Rules 2016, by Hon'ble Technical Member Sameer Kakar on behalf of the Bench Comprising of Sanjiv Jain, Member (Judicial) and Sameer Kakar, Member (Technical)

court officer.