

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

Company Appeal (AT) (Insolvency) No. 58 of 2022

IN THE MATTER OF:

Mr. C. Vijayakumar

Managing Director (Power of Board of Directors
suspended)

HCL Technologies Ltd.,

806, Siddharth,

96 Nehru Place, New Delhi- 110019

....Appellant

Vs.

1. M/s. Sahaj Bharti Travels

Having registered office at:

1257, Street No.10,

Madan Puri, Gurgaon- 122001, Haryana

2. HCL Technologies Ltd.

Having registered office at

806, Siddharth,

96 Nehru Place, New Delhi- 110019

...Respondents

For Appellants:

Mr. Nakul Dewan, Senior Advocate with Mr. Sathvik Chandrashekar, Mr. Sameer Jain, Advocates.

For Respondents:

Mr. Mohit Arura, Mr. Pragyan Pradip Sharma,
Advocates for R1.

Mr. Vinod Chaurasia, Advocate for R2.

J U D G M E N T
(26th May, 2022)

Ashok Bhushan, J.

1. This Appeal has been filed against the order dated 17.01.2022 passed by the Adjudicating Authority (National Company Law Tribunal), New Delhi Bench (Court-II) admitting the Application under Section 9 of the Insolvency

and Bankruptcy Code, 2016 (“IBC” for short) filed by the Respondent- ‘M/s. Sahaj Bharti Travels’ (Operational Creditor). The Appellant aggrieved by the said order has come up in this Appeal. This Tribunal while entertaining the Appeal on 19.01.2022 has stayed the order dated 17.01.2022 passed by the Adjudicating Authority. The brief facts of the case and sequence of the events necessary to be noticed for deciding this Appeal are:-

The Respondent No.2- ‘HCL Technologies Ltd.’ is a globally renowned business entity providing goods and services to various domestic and international government and private entities. The Respondent No.2 had reported a turnover of INR 51,786 Crores and a profit of INR 8,722 Crore as per its books for financial year ending on 31.03.2018. In the year 2015, the Corporate Debtor entered into an Agreement dated 19.11.2015 with Respondent No.1- Operational Creditor for provision of cabs to pick up and drop Corporate Debtor’s personnel to and from various locations. Term of the Agreement was from 20.04.2015 to 30.04.2018. As per the payment terms of the Agreement, invoices were required to be raised in terms of the Agreement within 60 days for services ‘delivered’ as well as services ‘billed’. As per Schedule A of the Agreement, in case cabs do not run for a minimum of 7000 kilometers, upon being eligible by fulfilling certain pre-conditions mentioned therein, a minimum guarantee amount would be payable. The Agreement was extended by Corporate Debtor till 31.12.2018. As per the Agreement between the parties, the Operational Creditor submitted its bills for services provided during the period of currency of Agreement and all invoices raised by the Operational Creditor were duly paid by the Corporate Debtor.

On 25.05.2018, an e-mail was sent by the Operational Creditor to the Corporate Debtor on subject of minimum guarantee payment. By e-mail of the same date, Corporate Debtor called the Operational Creditor for discussion. Meeting took place on 28.05.2018. E-mail dated 29.05.2018 was sent by the Operational Creditor itself with regard to Minutes of Meeting where it was mentioned that “payment dispute to be divided into two parts.....”. After further meetings and some correspondences, e-mail dated 05.09.2018 was sent by the Corporate Debtor to the Operational Creditor forwarding the calculation of minimum guarantee and requesting the acceptance and confirmation of the Operational Creditor along with the attachment which was part of the e-mail total amount Rs. 20,58,818/- was communicated. An e-mail dated 29.11.2018 was sent by the Corporate Debtor to Operational Creditor stating that the Corporate Debtor has verified the records and as per the records, no amount is outstanding or payable to Operational Creditor in terms of the Agreement including an account of minimum guarantee provision. E-mail further stated that however, considering the business relationship and with an objective of working together in future, the Corporate Debtor propose a good faith offer of Rs.20,58,818/- as one time full and final settlement of all issues between the parties. The Operational Creditor was requested to communicate his acceptance until 5 P.M. on 06.12.2018 after which the offer of Rs.20,58,818/- will lapse and be no longer capable of acceptance.

On 03.12.2018, Operational Creditor requested to make payment of Rs.81,96,237/-. Thereafter, a Demand Notice dated 08.05.2019 under

Section 8 of the IBC was sent by the Operational Creditor to the Corporate Debtor claiming total amount of debt due from the Corporate Debtor as Rs.3,54,10,565/-. The Corporate Debtor replied Section 8 Notice by reply letter dated 25.06.2019 denying the claim of the Operational Creditor. Detailed reply to the notice was sent stating that no amount is due. It was stated that whatever invoices were sent by the Operational Creditor, they were paid by the Corporate Debtor. It was mentioned that there exists no subsisting debt which is payable by the Corporate Debtor and Demand Notice has only been raised in order to arm-twist the Corporate Debtor to make payments. It was stated that no invoices for any demand of minimum guarantee was raised. The Operational Creditor thereafter filed an Application under Section 9 of the IBC claiming dues of Rs.3,54,10,565/-. The date of default was mentioned as 31.12.2018. After notices were issued on Section 9 Application, the Corporate Debtor filed a detailed reply dated 03.10.2019. The reply was divided into various sub-heads. Preliminary submissions were in following two parts:-

- (I) Contrary to Applicant's representations, the Respondent has disputed the alleged debt on various occasions.
- (II) There is no debt due towards Applicant
 - (a) There is no debt due towards the Applicant in terms of the Contract between the parties.
 - (b) There is no debt due towards the Applicant under law as the part of alleged debt is barred by limitation.

- (III) The Applicant has failed to disclose the various addendums to the Agreement executed between the parties.
- (IV) Applicant's understanding of the Minimum Guarantee is grossly erroneous.
- (V) The Applicant by preferring the present Application has made this Hon'ble Forum, a forum of recovery of alleged debt, as the financial health of the Respondent Company is good.

Apart from the above, para-wise reply to the Application was also given in the Reply.

2. The Adjudicating Authority after hearing the parties by impugned order dated 17.01.2022 admitted Section 9 Application. The Adjudicating Authority held that under the Agreement nowhere stated that the Operational Creditor was obliged to raise invoices towards the minimum guarantee clause. The pre-existing dispute raised by the Corporate Debtor was rejected holding it moonshine and a patent feeble argument, which is inconsistent with the service agreement. The Adjudicating Authority held that the Operational Creditor was entitled to claim minimum guarantee amount till 30.04.2018. Further, the Operational Creditor has rejected the offer of Rs.20,58,818/- made by the Corporate Debtor vide e-mail dated 29.11.2018.

3. Aggrieved by the order impugned, this Appeal has been filed by the Suspended Director of the Corporate Debtor.

4. We have heard Learned Senior Counsel for the Appellant and Learned Counsel appearing for the Respondent- Operational Creditor.

5. Learned Counsel for the Appellant submits that the Adjudicating Authority committed error in admitting Section 9 Application when there was pre-existing dispute between the parties regarding the claim of the Operational Creditor under Minimum Guarantee Clause. It is submitted that the Corporate Debtor has duly paid all invoices issued by the Operational Creditor regarding services provided. No invoice at any point of time was raised claiming under Minimum Guarantee Clause whereas under Agreement, the service provider was obliged to submit the invoices for the services delivered/billed to the Company within 60 days from the date of delivery of services, failing which Company will not be liable to consider the same for payment. It is submitted that no bill regarding Minimum Guarantee Clause has ever been raised. There is no question of any debt due on the Corporate Debtor. There being no debt due filing of Application Section 9 was without any basis and deserves to be out rightly rejected. The Corporate Debtor has submitted reply to Section 8 Notice denying the entire claim of the Operational Creditor. The reply notice was notice of dispute within the meaning of Section 8(2) of the IBC. The pre-existing dispute between the parties was reflected from the e-mail exchanged between the parties which were on the record. The Operational Creditor itself in its e-mail dated 29.05.2018 has noted that there is a payment dispute. Without prejudice offer given by the Corporate Debtor on 29.11.2018 for amount of Rs.20,58,818/- having not been accepted, the said offer stand closed and

Operational Creditor cannot be heard in contending that the debt was admitted by the Corporate Debtor. It is submitted that Section 9 Application filed by the Operational Creditor was nothing but proceeding for recovery of contractual amount for which remedy of the Operational Creditor was to invoke the arbitration clause as contained in the Agreement. It is submitted that there were four transport service providers and except Operational Creditor, all three for settlement of their payment dispute have invoked the arbitration clause under the Agreement. The Adjudicating Authority erred in holding that there was no requirement of issuing any invoice for Minimum Guarantee Clause which observations is against the explicit terms of the contract. Without raising invoice, it cannot be held that any debt was due on the Corporate Debtor. There was neither any debt nor any default on the part of the Corporate Debtor. Hence, the proceedings initiated were uncalled for. The proceedings was only arm-twisting the Corporate Debtor and ought not to have been admitted.

6. Learned Counsel appearing for the Operational Creditor refuting the submissions of Learned Counsel for the Appellant submits that the Operational Creditor was entitled for payment under the Minimum Guarantee Clause which remains unpaid during the currency of the contract. Hence, the Operational Creditor has full right and jurisdiction to initiate proceeding under the IBC, the default having been committed by the Corporate Debtor. It is further submitted that the debt of more than Rs.1 Lakh was admitted by the Corporate Debtor which is clear from e-mail dated 05.09.2018 issued by the Corporate Debtor to the Operational Creditor

containing an attachment where according to the Corporate Debtor, the amount payable to the Operational Creditor is Rs.20,58,818/-. He submits that even though the offer of the Corporate Debtor to accept the one time settlement amount has not been accepted by the Operational Creditor, the debt stand admitted and no error has been committed by the Adjudicating Authority in admitting Section 9 Application. It is submitted that the Operational Creditor did not commit any error in invoking Section 9 of the IBC in facts of the present case.

7. Learned Counsel for the parties in support of their respective submissions has relied on various judgments of the Hon'ble Supreme Court and this Tribunal which shall be referred to while considering the submission in detail.

8. From the submissions of the Learned Counsel for the parties and materials on record, following are the questions which arise for consideration in this Appeal:-

- (i) Whether there was a pre-existing dispute between the parties prior to issuance of Demand Notice under Section 8 dated 08.05.2019?
- (ii) Whether there was a debt due of which default was committed by the Corporate Debtor entitling the Operational Creditor to file an Application under Section 9 of the IBC?
- (iii) Whether the correspondences between the parties beginning from e-mail dated 26.05.2018 to 03.12.2018 proved admission of debt

by the Corporate Debtor of an amount of more than Rs. 1 Lakh which was sufficient to admit Section 9 Application?

(iv) Whether the Application filed by the Operational Creditor was an Application as a debt enforcement measures against the solvent company for recovery of a debt and not an Application for any Insolvency Resolution for Corporate Debtor?

9. Before we come to the submissions raised by the Counsel for the parties and questions formulated as above, we need to first notice the relevant portion of the Agreement between the parties which gave rise to filing of Section 9 Application by the Operational Creditor. An Agreement dated 19.11.2015 was entered between the parties for transport services to be provided by the Operational Creditor to the Corporate Debtor for the purpose of the employees of Company's commutation from the various points in NCR to all facilities of Corporate Debtor located in NCR as per Schedule "B" and back to various points from to all facilities of Corporate Debtor located in NCR. Clause 28 of the Agreement deal with 'Hire Charges' which also included 'payment terms'. Clause 28 of the Agreement is as follows:-

"28. Hire Charges: *The Hire Charges for the vehicles operated shall be paid as per the Schedule A annexed hereto which excludes service tax @ 5.60%. Company shall not be liable for any charges other than that are expressly provided in Schedule A.*

Payment Terms: The SERVICE PROVIDER agrees to submit the bills to the COMPANY on 5th of every

month for the Services rendered for the previous month. The SERVICE PROVIDER has to mention their PAN and TIN numbers on each invoice. Payments will be released within 45 days from the date of receipt of undisputed Invoice. The SERVICE PROVIDER agrees that it shall be solely responsible for and shall bear and pay all present and future taxes, duties, cess, levies, etc., applicable or payable with respect to the Services provided by it pursuant to this Agreement as also any additional taxes, duties, cess, levies, etc., as per existing law or an amendment to existing law or new legislation or notification. The Parties agree that the Service provider's obligation to render services/provide deliverables as set out under this Agreement/PO shall be valid only till the expiry of Agreement/PO validity date ("Validity Date") and that Company shall not be liable to make any payment as may be claimed by the vendor for services deliverables provided by the service provider beyond this Validity Date. The Parties agree that in case services/deliverables are to be delivered beyond the Validity Date then the Service provider should raise a request with Company to get the revised PO/ renewed agreement issued from the Company in its favour 45 days prior to the Validity Date.

The Parties further agree that Service provider shall raise and submit the invoices for the services delivered/billed to Company within 60 days from the date of delivery of services, failing

which Company will not be liable to consider the same for payment. The Service provider shall mention the purchase order/contract release order ('PO'/ 'CRO') number while raising the invoice and shall not deliver any services to Company without receipt of a valid PO/CRO from Company. The Service provider further agrees to indemnify Company against any loss that Company may suffer for not being able to claim cenvat credit benefit for reasons attributable to the Service provider including Service provider's failure to submit the invoices within aforesaid agreed timeline.."

10. Clause 35 of the Agreement provided that in case of any dispute between the Company and the service provider, the Company will nominate an Arbitrator, and the matter shall be resolved in terms of the Arbitration and Conciliation Act, 1996. Schedule A of the Agreement provided for 'Vehicle Description, Number of Vehicles to be deployed, Rates & Charges'. Schedule A contains following provisions regarding terms and conditions for Minimum Guarantee, which is to the following effect:-

"Terms and conditions for Minimum guarantee and back to back (applicable for small vehicles)

- 1. 90% availability of cab*
- 2. Average 2.5 routes per cab*
- 3. Usage of only Fully compliant cab (GPS and panic buttons on the device)*

Maximum 5 hours route duration for back to back trip

Other Terms & Conditions:

- a. For 7+1 seaters the above rate will be applicable with minimum running guarantees of 7000 km/cab/month on cumulative basis for dedicated registered fleet with HCL. This shall be effective from 1st September, 2015.*
- b. 100% trips will be paid (subject to actual deployment of the vehicle on evidence from GPS). However, except in case of cancellations and applicable penalties as defined in the contract will be imposed.”*

11. Clause (i) deals with ‘penalty clause’, which reads as under:-

“i. Penalty of Rs.1000/- per cab per day if the fleet committed by the SERVICE PROVIDER is not inducted as per the ramp up plan shared with the operations team.”

12. The period of contract was 20.04.2015 to 30.04.2018 and was renewal on mutual consent. The contract was extended till 31.12.2018.

Question No.1

13. As noted above, after receipt of Section 8 Demand Notice dated 08.05.2019 from the Operational Creditor, reply to demand notice was given by the Corporate Debtor vide letter dated 25.06.2019. In the reply notice, the

claim of Operational Creditor was denied altogether. It is useful to notice paras (c) to (g) which are as follows:-

“C. That the Demand in the Demand Notice raised by you are without any basis in the true factual scenario and are not the true reflection of the actual work done by you as per the Agreement for Transport Services between my Client and your Client dated 19th November 2015 along with Addendum 1 dated 17th July 2017, Addendum 2 dated 22nd January 2018 and Addendum 3 dated 4th September 2018 (the “Agreement”). The demand raised by your Client is not as per the prescribed terms of the Agreement and were not accompanied with the supporting documents/ details as the Agreement mandated.

D. That by way of the Demand Notice you have wrongly raised a Demand of INR 3,54,10,565/- (Indian Rupees Three Crore Fifty Four Lacs Ten Thousand Five Hundred Sixty Five Only) (the “Demand”). In this regard, it is highlighted that the Demand is raised without any basis and is hereby denied in totality.

E. With reference to clause 28 of the Agreement, your Client was supposed to raise and submit the invoices for the services delivered to my Client, within 60 (Sixty) days from the date of delivery of services failing which my Client could not be held liable to consider the same for payments. Whatever invoices were raised by your Client were duly paid by HCL. The Demand raised is not as per the terms and conditions of the Agreement and hence is denied. The non-submission of details like GPS data by your Clients clearly indicates the breach

of Agreement and hence the Demand raised is baseless and devoid of any merits.

F. This is pertinent to mention that HCL had intimated your Client via Email dated 8th July 2016 that the Minimum guarantee clause will only be applicable till 31st July 2016. Further the same reiterated via Email dated 29th November 2018. Further your Client via Email dated 3rd December 2018 have also admitted that the minimum guarantee clause is not applicable post 31st July 2016. This in itself shows that your Client has suppressed various facts & has given a wrong picture.

G. Thus, it is stated that there exists no subsisting debt which is payable by my Client to your Client. Hence, the instant Demand Notice has only been raised by you in order to arm-twist my Client to make payments to your Client, when there exists no legal basis whatsoever.”

14. It was further clearly stated in the reply notice that Operational Creditor was supposed to raise and submit the invoices for the services delivered within 60 days from the delivery of services failing which there was no liability to make any payment. It was stated that all invoices which have been sent to the Corporate Debtor has already been paid. In paras 5 to 8, following were stated:-

“5. Under Para 7 alleged outstanding payments on account of minimum guarantee, which your Client has

been making Demands for, is unfounded and bereft of any factual basis due to the following reasons:

Firstly, as per the terms and condition of the Agreement, the Minimum Guarantee was applicable only if all 4 conditions are met:

- *90% availability;*
- *Average 2.5 routes;*
- *Usage of only fully compliant cab (GPS & panic buttons); and*
- *Maximum 5 hours route.*

Your Client has been repeatedly non-compliant to such conditions which is also apparent with the number of penalties imposed on your Client during the performance of services which amounts to more than Rs.50,00,000 (Indian Rupees Fifty Lacks). The non-compliances of the afore stated details/conditions, by your Clients clearly indicates the breach of Agreement and hence the Demand raised is baseless and devoid of any merits.

Secondly, as stated in the preceding paragraphs had intimated your Client via Email dated 8th July 2016 that the Minimum guarantee clause will only be applicable till 31st July 2016. Further the same was reiterated via Email dated 29th November 2018. Further your Client via Email dated 3rd December 2018 has also admitted that the minimum guarantee clause is not applicable post 31st July 2016.

Thirdly, the terms and conditions for HCL to make payments were never fulfilled as under clause 28 of the Agreement, your Client was supposed to raise

and submit the invoices for the services delivered to my Client, within 60 (Sixty) days from the date of delivery of services failing which my Client could not be held liable to consider the same for payments. No invoices regarding the Demand were made within the stipulated period and hence the Demand as stated in the notice under reply is baseless and is in utter disregard of the terms and conditions of the Agreement. On the cost of repetition, it is again stated that my Client has already made payments of all the invoices raised by your Client and there stands no contractual obligation for my Client to pay the illegal and arbitrary Demand raised by your Client.

6. The contents of Para 8 are without any basis and relevance, the vehicles that were employed were paid by HCL on the basis of Invoice raised by your Client. Thus, there arises no question on any dues.

7. The contents of Para 9 are devoid of any merit, have no basis in fact or law and are hence denied in its entirety. As stated in the preceding paragraphs the Demand raised by you is unsustainable as per the governing terms of the Agreement and has no basis.

8. The content of Para 10 is absolutely baseless and denied in entirety. The Agreement under clause 28 specifically mentions that "The parties agree that the Service Provider shall raise and submit the invoices for the services delivered/billed to Company within 60 days from the date of delivery of services, failing which the Company will not be liable to consider the same for payment".

Since there was an express condition that makes the creditor liable to raise an invoice for any payment which is due and in absence of which my Client is not liable to make any payments. Thus falsifying the claim of your Client under para 10."

15. It is relevant to notice that the reply notice also referred to e-mail dated 29.11.2018 issued by the Corporate Debtor and e-mail dated 03.12.2018 issued by the Operational Creditor.

16. In Section 9 Application, the Operational Creditor itself has brought correspondences between the parties with regard to payment claimed by the Operational Creditor under Minimum Guarantee Clause which took place prior to demand notice dated 08.05.2019. From the materials on the record, it is clear that it is for the first time the Operational Creditor sent e-mail dated 28.05.2019 on subject of Minimum Guarantee payment. The contract was 20.04.2015 to 30.04.2018 during which period no invoices claiming payment under Minimum Guarantee Clause was raised by the Operational Creditor. It is for the first time that by e-mail dated 28.05.2019, Operational Creditor claimed Minimum Guarantee payment.

17. We have noted above the Clause 28 of the Agreement between the parties, which clearly stipulated that the service provider was to submit the bills to the company on 5th of every month for the services rendered for the previous month and payment may release within 45 days from the date of receipt of undisputed invoice. Further, Clause 28 of the Agreement stipulated:-

“The Parties further agree that Service provider shall raise and submit the invoices for the services delivered/billed to Company within 60 days from the date of delivery of services, failing which Company will not be liable to consider the same for payment.”

18. It is admitted case between the parties that all bills which were raised by the Operational Creditor on the Corporate Debtor regarding services provided by it were paid for. No invoices regarding services provided by service provider remain unpaid during currency of the contract. It is only the claim under Minimum Guarantee Clause which was raised for the first time on 28.05.2018 by sending an e-mail by Operational Creditor. After receipt of 25.05.2018 email from the Operational Creditor, Operational Creditor was called for meeting on 28.05.2018 and after 28.05.2018 meeting the Operational Creditor himself sent an e-mail capturing the Minutes of Meeting held on 28.05.2018, which is to the following effect:-

“XXX

Minutes of Meeting held on 28th of May 2018 time 11:45 onwards at HCL Technologies Ltd. A 9, Sector-3, Noida between HCL represented by Mr. Sanjeev Singh (Admin), Ajay Sharma (Sourcing & Procurement) and Mr. Rajiv (Finance) and Sahaj Bharti Travels (SBT) represented by Mukesh Kumar & Mr. Mithilesh Kumar for resolving issues related to outstanding payments as per contract dated 19th November 2015.

Dear Sirs

Thank you for showing your concern in resolving long pending issues with us and giving a chance to talk about our grievances. Please find the points we discussed upon during our meeting today.

1. Payment dispute to be divided into 2 parts say Part A for the period of service till July 2016 and Part B for the period from August 2016 till date to handle the current issues.

2. HCL to share their working for Part A related outstanding payments by Monday i.e. 4th June 2018 and upon confirmation on same from SBT could be closed on priority.

3. SBT to showcase the losses incurred from August 2016 till date to HCL and from a consensus to resolve the issues at the earliest (12th of June 2018).

4. SBT will participate in the current RFP run by HCL.

Please add/ modify if I have missed any point.

Thanks & Regards

Mukesh Kumar
SAHAJ BHARTI TRAVELS PVT LTD
PH- 0124-3224131, 9999888898
E-mail:- mukesh@sahajbhartitravels.com”

19. The above e-mail clearly indicates that there was dispute regarding payment between the parties. Subsequently, by e-mail dated 29.11.2018, the Corporate Debtor wrote to Operational Creditor making a good faith offer of Rs.20,58,818/- as one time full and final settlement. It is useful to notice the e-mail dated 29.11.2018 which is to the following effect:-

"From: Ajay Sharma [sharmaaj@hcl.com]
Sent: Thursday, November 29, 2018 1:13 PM
To : Sahaj Bharti Travels
Cc: Rajit Kapoor; Sanjeev Bhandari

Subject: Settlement of claimed outstanding amount on account of MG

Dear Mr. Mukesh

This is in reference to Transport Agreement dated 19/11/2015 ("Agreement") between HCL Technologies Ltd. and Sahaj Bharti Travels.

It is matter of fact that clause of Minimum Guarantee had been withdrawn w.e.f. 01/07/2016

In this regard, you have alleged that some dues of Rs. 1,11,91,096/- are outstanding including on account of MG provision under the Agreement. Please note that we have duly verified the records and per us no amount is outstanding or payable to you in terms of the Agreement including on account of MG provision.

However, considering our business relationship and with an objective of working together in future, we propose a good faith offer of Rs. 20,58,818/- as one time full and final settlement of all issues between the parties.

This limited period without prejudice offer remains open to be accepted by you until 5 pm on 6th December 2018 after which the offer will lapse and be no longer capable of acceptance. If you are agreeable to accept the offer, you are requested to confirm in writing before the aforesaid time and submit the invoice for the aforesaid amount immediately to enable us to make the payment accordingly.

Please note that nothing contained herein should be deemed to be an admission of any liability/ claim whatsoever.

Regards,

Ajay Sharma."

20. Offer made by e-mail dated 29.11.2018 was not accepted by the Operational Creditor rather by e-mail dated 03.12.2018, he again wrote claiming an amount of Rs.81,96,237/-. It is useful to extract e-mail dated 03.12.2018 sent by the Operational Creditor to the Corporate Debtor:-

*"From: Sahaj Bharti Travels
(mukesh@sahajbhartitravels.com)
Sent: Monday, December 03, 2018 3:01 PM
To: 'Ajay Sharma'
Cc: 'Rajit Kapoor', 'Sanjeev Bhandari'; 'Sahaj Bharti Travels'
Subject: RE: Settlement of claimed outstanding amount on account of MG
Attachments: RE: MOM 28-5-2018; MOM 28-5.2018*

Dear Sir(s)

In reference to your mail dated 8-7-2016 the minimum guarantee was applicable till 31st July 2016 and not 1st July 2016 as mentioned in this mail. Also, the payments made to us. Please refer to the excel sheet provided by us on 17-08-2018.

The current outstanding prior to withdrawal of MG clause is Rs. 81,96,237.00 whereas the offer made by you is appx. 1/4th of the amount which is unacceptable to us.

Please refer our meeting onand reference MOM shared on ...where we agreed to divide the entire situation in 2 parts.

Payment dispute to be divided into 2 parts say Part A for the period of service till July 2016 and Part B for the period from August 2016 till date to handle the current issues

2- SBT to showcase the losses incurred from August 2016 till date to HCL and form a consensus to resolve the issues at the earliest (12th of June 2018).

It seems that you are currently addressing the 1st issue only. Please share your thoughts on 2nd issue as well. Also, we request you to make payment of Rs. 81,96,237.00 on immediate basis so that we can reduce our loss.

Considering our partnership, we would be happy to help in case you need any additional data to support our demand. We also recommend for a complete reconciliation to plug the gaps in your data.

In case you disagree to pay the said amount we will be forced to take it up legally.

Thanks & Regards
MUKESH KUMAR
SAHAJ BHARTI TRAVELS PVT LTD.

21. The above e-mails exchanged between the parties, much prior to the Demand Notice dated 08.05.2019 indicate that there was pre-existing dispute between the parties regarding the claim made by the Operational Creditor under Minimum Guarantee Clause. The e-mail dated 29.11.2018 sent by the Corporate Debtor to the Operational Creditor clearly mentioned that the Corporate Debtor has verified its record and as per the record, no amount is outstanding or payable to the Operational Creditor in terms of the Agreement including an amount of Minimum Guarantee provision. Thus, there was clear denial of any claim of the Operational Creditor towards the Minimum Guarantee. Further, in the reply to Section 8 Notice, it was clearly mentioned that all invoices which have been issued by the Operational Creditor has been duly paid by the Corporate Debtor and no invoices regarding services provided is due. When it was clear case of the Corporate Debtor that all invoices regarding services provided has been paid and there is no due which was made clear by the Corporate Debtor even prior to date of Section 8 notice, the dispute was clearly pre-existing.

22. In the above reference, we need to notice the judgment of the Hon'ble Supreme Court in the context of pre-existing dispute. The locus classicus on the subject is judgment of the Hon'ble Supreme Court in ***"Mobilox Innovations Private Limited vs. Kirusa Software Private Limited- (2018) 1 SCC 353"***. The Hon'ble Supreme Court in the above case had occasion to

interpret Section 8 and Section 9 of the IBC. It was laid down that the dispute must exist before the receipt of the Demand Notice or invoice. The Hon'ble Supreme Court in the above case has noticed various judgments including judgments of the Foreign Court and enunciated the law, in para 51 of the judgment in following words:-

“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.”

23. In **“Transmission Corporation of Andhra Pradesh Limited vs. Equipment Conductors and Cables Ltd.- (2019) 12 SCC 697”**, this Court relying on **“MobiloX Innovations Private Limited”** (supra) held that existence of an undisputed debt is sine qua non of initiating CIRP. In paragraph 13, following has been held:-

“13. From the aforesaid, it follows that existence of an undisputed debt is sine qua non of initiating CIRP. It also follows that the adjudicating authority shall satisfy itself that there is a debt payable and there is operational debt and the corporate debtor has not repaid the same.....”

24. We may lastly refer the judgment of the Hon’ble Supreme Court in **“Kay Bouvet Engineering Ltd. vs. Overseas Infrastructure Alliance (India) Pvt. Ltd.- (2021) 10 SCC 483”**. The Hon’ble Supreme Court again reiterated and explained the principle laid down in MobiloX (supra). In para 21 again the law was reiterated in following words:-

“21. It is thus clear that once the “Operational Creditor” has filed an application which is otherwise complete, the adjudicating authority has to reject the application under Section 9(5)(ii)(d) of IBC, if a notice has been received by “Operational Creditor” or if there is a record of dispute in the information utility. What is required is that the notice by the “Corporate Debtor” must bring to the notice of “Operational Creditor” the existence of a dispute or the fact that a suit or arbitration proceedings relating to a dispute is

pending between the parties. All that the adjudicating authority is required 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 a mere bluster. It has been held that however, at this stage, the Court is not required to be satisfied as to whether the defence is likely to succeed or not. The Court also cannot go into the merits of the dispute except to the extent indicated hereinabove. It has been held that so long as a dispute truly exists in fact and is not spurious, hypothetical or illusory, the adjudicating authority has no other option but to reject the application.”

25. When we apply the law laid down by the Hon’ble Supreme Court in the facts of the present case, it is clear that the defence which was raised by the Corporate Debtor in its reply to Demand Notice as well as detailed reply filed in Section 9 Application cannot be said to be moonshine unsupported by any document. There was written correspondences between the parties, e-mail exchanged especially the e-mail dated 29.11.2018 sent by the Corporate Debtor to the Operational Creditor denying its liability of any payment towards the Minimum Guarantee Clause which was much before the notice under Section 8. Thus, pre-existing dispute was very much there which is supported by materials on the record. Further, as noted above, the claim under Minimum Guarantee Clause as claimed in Section 9 Application was

raised by the Operational Creditor for the first time on 25.05.2018 without raising any invoices. All invoices raised by the Operational Creditor for transport services provided to company during the period of contract were paid and no invoices remained unpaid. The defence of Corporate Debtor that there is no liability to pay any amount towards Minimum Guarantee can neither be said to be moonshine nor spurious, hypothetical or illusory. The Adjudicating authority without properly considering the materials on record which existed and reflected pre-existing dispute between the parties rejected the claim of pre-existing dispute observing is as moonshine and a patent feeble argument. In paragraph 46 of the judgment, the Adjudicating Authority has observed:-

“46. Since the contractual relationship between the parties in the instant case is determined through their contract (which in this case has been determined by the original ATS along with the first addendum) and not by emails, therefore, we are of the view that the dispute raised by the Corporate Debtor is moonshine and a patent feeble argument, which is inconsistent with the service agreement (ATS) read with the 1st Addendum.”

26. Although the Adjudicating Authority has noticed the e-mail dated 29.11.2018 by which a good faith offer was given to settle the dispute, the Adjudicating Authority missed the clear statement in the e-mail that according to the Corporate Debtor, no payment towards Minimum Guarantee or any other payment is due on the Corporate Debtor. Without considering the said e-mail, the Adjudicating Authority has observed that dispute raised

by the Corporate Debtor is moonshine and a patent feeble argument. We are of the view that the above observation has been made by the Adjudicating Authority without considering the materials and without applying the law laid down by the Hon'ble Supreme Court. Further, the Adjudicating Authority observed that dispute raised is inconsistent with the service agreement which observation was also patently erroneous and unsustainable. The Corporate Debtor claimed in the reply to Section 8 Notice as well as Section 9 Application reply that no invoices have been raised claiming any Minimum Guarantee payment by the Corporate Debtor, whereas under the Agreement, invoices have to be raised within 60 days. How the plea of Corporate Debtor is inconsistent with service agreement is neither explained nor can be countenanced. We, thus, are of the view that the Adjudicating Authority erred in rejecting the defence of the Appellant that there was pre-existing dispute.

27. The defence raised by the Corporate Debtor that there is no liability to make any payment under Minimum Guarantee is a genuine dispute within the meaning of law as laid down by the Hon'ble Supreme Court. There being pre-existing dispute between the parties, the Adjudicating Authority committed error in admitting Section 9 Application. Hence, the impugned order deserves to be set aside on this count alone.

Question No.2

28. The pre-condition for filing an Application under Section 9 is that a debt is due and default is committed by the Corporate Debtor. Whether in

the present case debt is due and default was committed by the Corporate Debtor has to be examined in reference to Service Agreement between the parties and other materials on the record. Clause 28 of the Agreement, as noted above, clearly contemplates that the service provider agrees to submit the bills to the Company on 5th of every month for the services rendered for the previous month and on each invoices payment will be released within 45 days from the date of receipt of undisputed invoice. Thus, the question of debt due shall arise only when payment is not made within 45 days to invoices submitted by the service provider. In the present case, the categorical case of the Corporate Debtor is that all invoices which were submitted by the service provider during the contract period has been paid and no invoice remained unpaid. We further notice that Clause 28 of the Agreement also contemplates that the service provider is to raise and submit the invoices for the services delivered/billed to Company within 60 days from the date of delivery of services, failing which Company will not be liable to consider the same for payment. Thus, for any service if no invoices are raised or billed within 60 days, there is no liability to make payment by the Corporate Debtor.

29. Taking the above two requirements as provided in Clause 28, it is clear that the present is a case where all invoices submitted by the service provider to the Corporate Debtor for transport services utilised by Corporate Debtor has been paid and no invoice for any services is unpaid. The claim which was raised by the Operational Creditor was a claim of Minimum Guarantee Clause. Minimum Guarantee Clause, as notice above, provides

that for 7+1 seaters rate will be applicable with minimum running guarantees of 7000 km/cab/month on cumulative basis. Thus, the terms and conditions which is part of Schedule-A to the Service Agreement regarding rates and charges are relevant condition for submitting invoices. The question of Minimum Guarantee of 7000 kilometres become payable when running of a particular designated vehicle does not run for 7000 km/cab/month. For example, if a cab which is eligible for Minimum Guarantee does not run 7000 Km in a month, the service provider is to charge Minimum Guarantee with regard to said cab and the invoices to be issued for payment of such transport services has to be as per Minimum Guarantee. We fail to see how the Adjudicating Authority has come to conclusion that for Minimum Guarantee Clause no invoices are to be raised by the service provider. Minimum running guarantee for a cab is a promised payment to a cab per month and the said entitlement arises when a cab does not run 7000 km. Hence, while submitting the invoice, service provider is obliged to include in the bill if there is any claim on the basis of Minimum Guarantee provided in the service contract. The service agreement does not indicate that the Corporate Debtor of its own shall compute any payment of Minimum Guarantee and make payment. Payment has to be demanded by invoices and Clause 28 which obliged the service provider to submit the bills to the company for the services rendered for the previous month includes services rendered which are eligible for payment as per actual running or as per Minimum Guarantee. Without submitting a bill or invoice, the Operational Creditor cannot claim that any amount has become due. The Adjudicating Authority without considering the Clause 28 of the Agreement

had erred in observing that the Service Agreement does not stipulate that Operational Creditor shall raise invoices towards Minimum Guarantee Clause. In paragraph 31 of the impugned order, following observation has been made:-

“31. That from the perusal of Clause 28 of the Agreement, it is observed that the invoices were to be raised for the services rendered by the Applicant to the Corporate Debtor. However, in the case of Minimum Guarantee Clause, no service as such was provided by the Applicant to the Corporate Debtor, it was merely a minimum usage guarantee charge for 7,000 Km/cab/month on cumulative basis, which the Corporate Debtor was required to pay to the Operational Creditor. Further, the Schedule A annexed to the Agreement nowhere stipulates that the Applicant was obligated to raise such invoice(s) towards the Minimum Guarantee Clause.”

30. The observations made in paragraph 31 of the Adjudicating Authority are wholly erroneous and contrary to Clause 28 which has been referred to in paragraph itself. We, thus, have arrived at a conclusion that there is no debt due on the Corporate Debtor of which default can be imputed on the Corporate Debtor so as to enable the Operational Creditor to initiate Section 9 proceedings. No invoices having been raised with regard to claim of the Minimum Guarantee, no debt was due and the Application under Section 9 was liable to be rejected on this ground also.

Question No.3

31. Learned Counsel for the Respondent has much emphasised on the alleged admission of debt by the Corporate Debtor. He submits that the Corporate Debtor having admitted debt of Rs.20,58,818/-, Application under Section 9 has rightly been admitted on admission of such debt even if there is a dispute regarding the amount to which the Operational Creditor may be entitled. We now proceed to look into the material on record to find out as to whether before issuance of notice under Section 8, debt can be said to have been admitted by the Corporate Debtor. The claim of admission of the debt by the Respondent is based on e-mail dated 05.09.2018 as has been noticed above. It is true that in September 5, 2018 e-mail, the Corporate Debtor sent an attachment on Minimum Guarantee calculation amounting to Rs.20,58,818/-. The e-mail further asked the acceptance and confirmation of the Operational Creditor so as to move to next step of payment. No acceptance was communicated to the e-mail dated 05.09.2018 and ultimately on 29.11.2018, Corporate Debtor communicated to the Operational Creditor that after due verification of the record, it is found that no outstanding is payable to the Operational Creditor in terms of the Agreement including Minimum Guarantee provisions. However, considering the business relationship and with an objective of working together in future, a good faith offer of Rs.20,58,818/- was made as one time full and final settlement of all issues between the parties. The e-mail clearly mentioned *“This limited period without prejudice offer remains open to be accepted by you until 5 pm on 6th December 2018 after which the offer will lapse and be no*

longer capable of acceptance". The above offer was never accepted by the Operational Creditor, hence, offer lapsed as per the explicit terms communicated by the e-mail.

32. The submission of the Counsel for the Operational Creditor is that the e-mail dated 05.09.2018 and the subsequent e-mail dated 29.11.2018 contains an admission of debt by the Corporate Debtor and there being admission of debt of Rs.20,58,818/-, Section 9 Application deserves to be admitted.

33. Learned Counsel for the Respondent- Corporate Debtor has placed reliance on various judgment of this Tribunal to support his submission that in event debt to the extent of Rs.1 Lakh is admitted, the petition under Section 9 needs to be admitted. He has placed reliance on judgment of this Tribunal in ***"Apya Capital Services Private Limited vs. Guardian Homes Private Limited- Company Appeal (AT) (Ins.) No.412 of 2020"*** wherein in paragraph 8 following was held:-

"8. In view of the foregoing discussion on merits of the case, we are of the considered opinion that the Adjudicating Authority has landed in error in holding that there was no 'debt' as claimed by the Appellant and there was 'deficiency in service' provided by the Appellant. The findings recorded by the Adjudicating Authority are grossly erroneous and same cannot be supported. Once the liability in respect of Rs. 75 lakh was admitted and the same was not discharged by the Corporate Debtor, dispute in regard to quantum of debt would be immaterial at the stage of

admission of application under Section 7 unless the debt due and payable falls below the minimum threshold limit prescribed under law. The impugned order is liable to be set aside as the same is unsustainable.”

34. To the similar effect a judgment relied by the Counsel for the Respondent of this Tribunal in **“Manjeet Kaur Sran vs. Tricolite Electrical Industries Ltd.- Company Appeal (AT) (Ins.) No. 894 of 2019”** wherein in paragraph 12, following was held:-

“12. From the aforesaid finding of the Hon’ble Supreme Court, it is clear that the claim even if disputed, if default is more than Rs. 1 lakh, the Appellant will initiate the proceedings against the ‘Corporate Debtor’. Submission is made on behalf of the Appellant that the amount disputed by the ‘Corporate Debtor’ amounts to existence of dispute but such submission cannot be accepted.

It does not come within the meaning of existence of dispute. Dispute raised regarding quantum of amount in the absence of any suit or arbitration or other evidence, it cannot be said to be pre-existing dispute.

We find no merit in this appeal. The Appeal is dismissed. However, although the appeal is dismissed, this order will not come in the way of Appellant to settle the matter with the Respondent and others u/s 12A of the ‘I&B’ Code.”

35. There can be no quarrel to the proposition that if amount of default to the extent of more than Rs.1 Lakh is admitted, Insolvency Resolution

Proceeding can be initiated against a Corporate Debtor but the question to be answered is as to whether in facts of the present case whether it can be accepted that the Corporate Debtor admitted the debt of more than Rs.1 Lakh as contended by the Counsel for the Respondent. When we look into the e-mail dated 29.11.2018, as extracted above, it is clear that there is categorical statement to the following extent:-

“Please note that we have duly verified the records and as per us no amount is outstanding or payable to you in terms of the Agreement including on account of MG provision.”

36. The above e-mail cannot be read to mean an admission of any debt. Insofar as the earlier e-mail dated 05.09.2018 is concerned, there also an offer was made by the Corporate Debtor which was subject to acceptance by the Operational Creditor which was never accepted but subsequently on 29.11.2018 after verification of all records, it was communicated that no amount is due. No admission of debt can be accepted as contended by Counsel for Respondent No.1. The Corporate Debtor in reply to Section 8 notice as well as in reply to Section 9 Application clearly had categorically denied the claim of the Operational Creditor. In Reply to Application under Section 9 as well as Reply under Section 8 Notice, the Corporate Debtor has categorically pleaded that all invoices issued by the Operational Creditor during the contract period has been paid and no invoices having been raised with regard to claim of Minimum Guarantee, no debt is due on the Corporate Debtor. In view of the categorical case taken by the Corporate Debtor, it cannot be held that Corporate Debtor at no point of time admitted the debt.

The offer of Rs.20,58,818/- was good faith offer as has been termed by the Corporate Debtor itself which cannot amount to any admission of debt. We, thus, are of the view that the submission of the Operational Creditor that Corporate Debtor has admitted the debt of more than Rs.1 Lakh, hence, admission of the Application is justified cannot be accepted. There have been categorical denials of the claim of the Operational Creditor by the Corporate Debtor, as noticed above, the Corporate Debtor never admitted any debt. Thus, submission of the Operational Creditor that debt is admitted is without any substance.

Question No.4:-

37. We need also to consider as to whether Application under Section 9 filed by the Operational Creditor was virtually an Application for debt enforcement measures or the Application was filed for resolution of any insolvency of the Corporate Debtor.

38. We have already noted that the claim of the debt of the Minimum Guarantee as raised by the Operational Creditor was out of the Service Agreement. It is also relevant to notice that Clause 35 of the Service Agreement provided for resolution of the dispute mechanism in following word:-

“35. Jurisdiction: *It is agreed that in case of any dispute between the COMPANY and the SERVICE PROVIDER the COMPANY will nominate an Arbitrator, and the matter shall be resolved in terms of the Arbitration and Conciliation Act, 1996, including any*

modification or re-enactment thereof in force from time to time. The venue of Arbitration will be at Noida (U.P) and the decision of the Arbitrator shall be final and binding on both parties. Parties agree to submit to exclusive jurisdiction of Courts at New Delhi.”

39. It is true that the mere fact that a party has remedy under the Arbitration & Conciliation Act, 1996 is not a ground to deny the remedy as provided in the IBC which is well settled law but time and again it has been reiterated by the Hon’ble Supreme Court that IBC proceeding should not be converted in debt recovery proceeding. The Hon’ble Supreme Court in “**Swiss Ribbons Pvt Ltd v Union of India (2019) 4 SCC 17**” has held that the IBC is legislation to ensure revival and continuation of the Corporate Debtor and nor mere recovery legislation for creditors. In paragraph 28, following has been laid down:-

“28. It can thus be seen that the primary focus of the legislation is to ensure revival and continuation of the corporate debtor by protecting the corporate debtor from its own management and from a corporate death by liquidation. The Code is thus a beneficial legislation which puts the corporate debtor back on its feet, not being a mere recovery legislation for creditors.....”

40. The Hon’ble Supreme Court again in “**K. Kishan vs. M/s. Vijay Nirman Company Pvt. Ltd.- (2018) 17 SCC 662**” held that Operational Creditors cannot use the Insolvency Code as a substitute for debt enforcement procedures. In paragraph 22, following has been held:-

“22. Following this judgment, it becomes clear that operational creditors cannot use the Insolvency Code either prematurely or for extraneous considerations or as a substitute for debt enforcement procedures. The alarming result of an operational debt contained in an arbitral award for a small amount of say, two lakhs of rupees, cannot possibly jeopardize an otherwise solvent company worth several crores of rupees. Such a company would be well within its rights to state that it is challenging the Arbitral Award passed against it, and the mere factum of challenge would be sufficient to state that it disputes the Award. Such a case would clearly come within para 38 of Mobilox Innovations (supra), being a case of a pre-existing ongoing dispute between the parties. The Code cannot be used in terrorem to extract this sum of money of Rs. two lakhs even though it may not be finally payable as adjudication proceedings in respect thereto are still pending. We repeat that the object of the Code, at least insofar as operational creditors are concerned, is to put the insolvency process against a corporate debtor only in clear cases where a real dispute between the parties as to the debt owed does not exist.

41. Similarly, in **“Kay Bouvet Engineering Ltd.”** (supra) again the Hon’ble Supreme Court cautioned that objects of IBC not to enable operational creditors to put the corporate debtor into the insolvency resolution process prematurely or initiate the process for extraneous considerations. In paragraph 19, following has been held:-

“19. It could thus be seen that this Court has held that one of the objects of the IBC qua operational debts is to ensure that the amount of such debts, which is usually smaller than that of financial debts, does not enable operational creditors to put the corporate debtor into the insolvency resolution process prematurely or initiate the process for extraneous considerations. It has been held that it is for this reason that it is enough that a dispute exists between the parties.”

42. The Court cannot be oblivious of the fact as to what is the nature and purpose of the proceeding under Section 9 initiated by an Operational Creditor. The facts of the present case can be taken to understand the nature of the proceeding initiated by the Operational Creditor. As noted, the Corporate Debtor is a globally renowned business entity providing goods and services to various domestic and international government and private entities. It is pleaded before us that in the books for financial year ending on 31.03.2018, Corporate Debtor has turnover of INR 51,786 Crores and a profit of INR 8,722 Crore. The Operational Creditor was engaged by the Corporate Debtor for providing transport services and all invoices issued by the Operational Creditor during the period of contract has been paid. After expiry of initial contract on 30.04.2018 for the first time the Operational Creditor raised claim of payment on the basis of Minimum Guarantee as per the Service Agreement. No invoices were ever issued by the Operational Creditor claiming any debt on the basis of Minimum Guarantee whereas as observed above, it was open for the Operational Creditor to bill the Company on the basis of Minimum Guarantee where it became applicable in respect of

a trip but at no point of time any invoice with regard to payment on the basis of Minimum Guarantee was raised. The Operational Creditor initiated Section 9 proceedings virtually for establishment of its claim of Minimum Guarantee which was never accepted or admitted by the Corporate Debtor. The proceeding under Section 9 in facts of the present case were proceeding for debt enforcement by the Operational Creditor. As per clause 35 of the Agreement, as noted above, in event of any dispute between the parties, the Corporate Debtor will nominate an Arbitrator, and the matter shall be resolved in terms of the Arbitration and Conciliation Act, 1996 but instead of proceeding under Clause 35, Operational Creditor has invoked IBC proceedings against the solvent company.

43. In view of the law laid down by the Hon'ble Supreme Court, as noted above, where time and again the Hon'ble Supreme Court has cautioned against IBC being turned into debt enforcement proceeding, we are satisfied that Section 9 Application filed by the Operational Creditor in the facts of the present case was nothing but the proceeding for debt enforcement for which Section 9 of the IBC is not the forum. The Adjudicating Authority committed serious error in admitting Section 9 Application in the facts of the present case.

44. In view of the foregoing discussions, we are of the considered opinion that the order of the Adjudicating Authority dated 17.01.2022 is unsustainable. In view of our reasons and conclusions, as noted above, the Application filed by the Operational Creditor under Section 9 deserves to be rejected.

45. In result, we allow the Appeal and set aside the order dated 17.01.2022 passed by the Adjudicating Authority and reject Section 9 Application filed by the Operational Creditor. Parties shall bear their own costs.

**[Justice Ashok Bhushan]
Chairperson**

**[Shreesha Merla]
Member (Technical)**

**[Naresh Salecha]
Member (Technical)**

New Delhi
Anjali