



**IN THE NATIONAL COMPANY LAW TRIBUNAL
ALLAHABAD BENCH, PRAYAGRAJ**

CP (IB) No. 357/ALD/2018 With IA No.404/2020

*(Application filed under Section 9 of the Insolvency and Bankruptcy Code, 2016,
read with Rule 6 of the Insolvency and Bankruptcy Rules, 2016.)*

IN THE MATTER OF:

DELHI PRAKASHAN VITRAN PRIVATE LIMITED

Add: E-8, Jhandewala Estate,
Rani Jhansi Road, New Delhi – 110055

.... Operational Creditor / Applicant

Versus

AH WHEELER AND COMPANY PRIVATE LIMITED

Add: 23, Lal Bahadur Shastri Marg
Allahabad, Uttar Pradesh-211001

.... Corporate Debtor / Respondent

Order Pronounced On: 07.10.2025

Coram:

Mr. Praveen Gupta : *Member (Judicial)*

Mr. Ashish Verma : *Member (Technical)*

Appearances:

Sh. Rahul Agrawal with : *For the Operational Creditor*
Sh. Shubham Agarwal, Advs.

Sh. Manish Goel, Sr. Adv. and : *For the Corporate Debtor*
Ms. Sushmita Mukherjee, Adv.

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ORDER

1. The present Application was filed on 16.10.2018 under Section 9 of the Insolvency and Bankruptcy Code, 2016 (**hereinafter referred as “the Code/IBC”**) read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 (**hereinafter referred as “the Rules”**) by M/s Delhi Prakashan Vitran Private Limited (**hereinafter referred as "Applicant/Operational Creditor/OC"**) to initiate the Corporate Insolvency Resolution Process (**hereinafter referred as "CIRP"**) against M/s A.H. Wheeler and Company Private Limited (**hereinafter referred as "Respondent/Corporate Debtor/CD"**) due to its failure to pay the total outstanding operational debt of Rs. 1,34,41,501.58/- to the Operational Creditor, declaring the date of default as 31.08.2017.
2. The brief facts leading to the present application are that the Operational Creditor and the Corporate Debtor were in longstanding business relations, under which the Operational Creditor entered into various agreements from time to time for the supply of books/magazines. Pursuant thereto, the Operational Creditor supplied several consignments of books and magazines which, according to the Applicant, were duly received by the Corporate Debtor without demur or protest.

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3. It is submitted that between January 2016 to June 2018, Operational Creditor raised various invoices aggregating to Rs. 4,95,96,469.43/- (Four Crores Ninety-Five Lakhs Ninety -Six Thousand Four Hundred and Sixty-Nine Rupees Forty- Three Paisa) upon the Corporate Debtor. These invoices were stated to have been accepted without objection. In addition, an amount of Rs. 1,24,72,866.35/ - (One Crore Twenty-Four Lakhs Seventy-Two Thousand Eight Hundred and Sixty-Six Rupees Thirty-Five Paisa) was already outstanding from prior transactions between the parties.
4. During the period from January 2016 and August 2018, a sum of Rs. 1,45,31,167.20/- (One Crore Forty-Five Lakhs Thirty-One Thousand One Hundred and Sixty-Seven Rupees Twenty Paisa) was credited to the account of the Operational Creditor on account of returns of unsold magazines/books by the Corporate Debtor. This amount was adjusted towards the dues of Rs. 1,24,72,866.35/- leaving a balance amount of Rs. 20,58,300.85/- (Twenty Lakhs Fifty-Eight Thousand Three Hundred and Eighty-Five Paisa) which was further adjusted against the subsequent invoices.
5. It is further submitted that during the same period, the Corporate Debtor made certain payments totaling Rs. 3,40,96,667/- (Rupees Three Crores Forty Lacs Ninety-Six Thousand Six Hundred and Sixty-Seven) against



invoices raised up to August 2017 (partly). However, according to the Applicant, no payments were made against the invoices raised for the period from August 2017 (partly) till May 2018, thereby leaving an outstanding balance of Rs. 1,34,41,501.58/- (One Crore Thirty-Four Lacs Forty-One Thousand Five Hundred and One Rupees Fifty-Eight Paisa).

6. The Operational Creditor claims to have pursued the Corporate Debtor for payment on several occasions, including through emails dated 29.03.2018, 19.04.2018, 28.04.2018, 07.05.2018, 08.06.2018 and 20.06.2018 but to no avail. Consequently, a demand notice dated 20.08.2018 in Form 3 was issued under Section 8 of the Code, demanding payment of the outstanding amount of Rs. 1,34,41,501.58/- from 31.08.2017 (date of the presentation of the invoice from which the payments are not being made) within 10 days of receipt of notice.
7. In response to the demand notice dated 20.08.2018, the Corporate Debtor, through reply dated 31.08.2018, raised various objections disputing the claim of the Operational Creditor. It was, contended that there were discrepancies in the accounts, miscalculations in the debit balances and that the Operational Creditor had failed to provide requisite supporting documents such as delivery challans, dispatch slips, and railway receipts necessary to verify the actual supplies. Allegations were also raised



regarding delayed supplies leading to unsold stock, loss of goodwill, and additional costs of returns. The Corporate Debtor further alleged that the Operational Creditor attempted to bypass it by directly approaching the bookstall agents, thereby causing commercial prejudice and loss of business. In light of the aforesaid objections, the Corporate Debtor sought reconciliation of accounts and conveyed that resolution of the dispute would not be possible unless and until the account statements are reconciled from both the sides.

8. It is submitted that despite receipt of the demand notice, the Corporate Debtor did not clear the alleged dues. Hence, the present Application came to be filed by the Operational Creditor, seeking initiation of CIRP against the Corporate Debtor for the outstanding sum of Rs. 1,34,41,501.58/-.
9. The Applicant also filed an affidavit dated 15.10.2018 in terms of Section 9(3)(b) of the Code attached at page no. 761 of the petition.

REPLY ON BEHALF OF THE RESPONDENT / CORPORATE DEBTOR.

10. The Respondent/Corporate Debtor filed its short counter affidavit (reply) vide diary no. 48 dated 10.01.2019, denying all the contentions raised by the Applicant/Operational Creditor, and pleaded that the present application is liable to be dismissed on the following grounds:



- a. The Respondent submits that the Applicant/Operational Creditor has not approached with clean hands and has concealed material facts while making false and fabricated assertions to wrongfully gain.
- b. It is contended that there exist serious disputes between the parties regarding the accounts, which were duly communicated to the Applicant. An email dated 17.05.2018 (Annexure-2) specifically pointed out discrepancies and requested reconciliation, but this was suppressed in the Application.
- c. The Applicant initially agreed to reconcile accounts and fixed a meeting for 17.07.2018 (emails dated 09.07.2018 and 11.07.2018 – Annexures 3 & 4). However, the reconciliation never took place, and the Applicant prematurely served a demand notice on 20.08.2018, showing exaggerated figures.
- d. The Respondent replied to the demand notice on 31.08.2018, specifically disputing the claim and again requesting reconciliation. Despite this, the Applicant proceeded with the present petition.
- e. The Respondent highlights that the Applicant has made false statements on oath by claiming that no dispute was raised. In fact, disputes were raised not only about the amount but also about the quality of services. The Applicant's false averments amount to perjury, and the Respondent reserves its right to initiate proceedings under Section 340 Cr.P.C.
- f. The Respondent asserts that the Applicant actually owes an amount of Rs. 49,85,019/- to the Respondent. This is supported by the reconciliation chart annexed (Annexure-6), showing discrepancies and losses caused by delayed supplies.



- g.** It is contended that supplies were consistently delayed, resulting in huge unsold stock, additional expenses, and loss of goodwill. Complaints from Book Stall Agents corroborating late supplies are annexed (Annexure-7).
- h.** As per the agreement, supplies were on a "Sale or Return" basis. However, this does not justify delayed supplies, as timely delivery is crucial in the magazine business. Late deliveries rendered copies redundant, leading to further losses.
- i.** The Respondent also alleges violation of contractual terms, including non-supply of Railway Receipts, dispatch slips, and hand delivery challans, which were mandatory under the agreement.
- j.** Further, it is alleged that the Applicant indulged in unethical practices by directly approaching Book Stall Agents, offering trade discounts of 25-30% to bypass the Respondent. Letters from Agents substantiating this allegation are annexed (Annexure-8). Such conduct is termed fraudulent, dishonest, and detrimental not only to the Respondent but also to government revenue, as license fees on railway stall sales are involved.
- k.** Relying on the judgment of the Hon'ble Supreme Court in *Mobilox Innovations Pvt. Ltd. v. Kirusa Software Pvt. Ltd.*, and the NCLAT in *A D Electro Steel v. Anil Steel*, the Respondent argues that the existence of a prior dispute, duly raised before the demand notice, bars admission of this petition.
- l.** The Respondent concludes that the claim of the Applicant is wholly disputed, inflated, and misconceived, while in fact, money is due



from the Applicant to the Respondent. Therefore, the present Section 9 application deserves to be dismissed in limine.

REJOINDER ON BEHALF OF THE APPLICANT /
OPERATIONAL CREDITOR

11. The Applicant/Operational Creditor filed a rejoinder dated 25.09.2019 and stated as follows:

- a. It is pointed out that on 06.12.2018, Corporate Debtor's counsel sought time to file a counter affidavit, but no liberty was taken to file a short counter affidavit.
- b. The Tribunal's order dated 06.12.2018 granted two weeks' time to file counter affidavit. However, the Corporate Debtor filed a short counter affidavit only on 10.01.2019 i.e., after expiry of more than 4 weeks, showing a deliberate attempt to delay proceedings.
- c. Operational Creditor emphasizes that proceedings under the IBC are time-bound and strict timelines must be adhered to.
- d. Therefore, Operational Creditor prays that no further opportunity be given to Corporate Debtor for filing a detailed counter.
- e. Existence of pre-existing dispute with Corporate Debtor has been denied. In this regard, the Operational Creditor has submitted that it had sent several emails dated 29.03.2018, 19.04.2018, 28.04.2018, 07.05.2018 (Annexure-4 to application) mentioning the outstanding amounts. Corporate Debtor neither replied nor raised any dispute, except in its email dated 17.05.2018 with vague assertions of discrepancies.



- f.** As regards the reconciliation of account with the Corporate Debtor, it is submitted by the Operational Creditor that it sent multiple emails dated 21.05.2018, 08.06.2018, 20.06.2018, 06.07.2018 seeking reconciliation, but Corporate Debtor failed to respond. Left with no choice, Operational Creditor notified by email on 09.07.2018 that its officials will visit Corporate Debtor's Allahabad office on 17.07.2018.
- g.** Corporate Debtor's director, Mr. Arunjeet Banerjee, by reply dated 11.07.2018, sought postponement beyond 25.07.2018, which shows their lack of intention to reconcile.
- h.** Operational Creditor replied that tickets were already booked and requested meeting with other officials such as Mr. R.K. Srivastava and Mr. A.K. Sarkar.
- i.** On 17.07.2018, Operational Creditor's officials met Mr. A.K. Sarkar (staff of Corporate Debtor) who was fully satisfied with the account statement and raised no dispute. Despite reconciliation, Corporate Debtor failed to release payments.
- j.** Instead, Corporate Debtor sent an email dated 27.07.2018 again seeking time to reconcile, without denying liability. Historically, payments were made within 3 months from invoice; however, Corporate Debtor started delaying payments, thus necessitating service of demand notice dated 20.08.2018.
- k.** Allegation that Operational Creditor did not provide supply statements, is false. Operational Creditor supplied all statements by email dated 06.03.2018 and registered posts dated 20.04.2018, 09.05.2018, 07.06.2018. In fact, in its email dated 27.07.2018,



Corporate Debtor itself acknowledged receipt of invoices and statements.

- l.** It is further emphasised by the Operational Creditor that it was continuously following up through emails from March-July 2018 for payment of outstanding amounts. Corporate Debtor raised vague plea of reconciliation only to avoid payment.
- m.** The Operational Creditor further explained that no dispute was raised prior to demand notice dated 20.08.2018. Payments continued up to June 2018 against August 2017 supply, which itself shows absence of dispute. Even after May 2018, Corporate Debtor continued issuing fresh instructions for supply orders, including change in indent for Kishanganj Railway Book Stall (August 2018).
- n.** It is clarified by the Operational Creditor that dispute must exist prior to demand notice u/s 8 of IBC, 2016. Corporate Debtor failed to demonstrate any genuine dispute prior to Section 8 notice. As emphasized by the Operational Creditor that such pleas now taken, are frivolous, afterthought, and moonshine defences to escape liability under the Code.
- o.** Operational Creditor submits that the Corporate Debtor's reliance on disputes regarding supply quality, discrepancies, or reconciliation is untenable as no contemporaneous or specific dispute was raised before the demand notice.
- p.** Thus, the rejoinder concludes that the Section 9 petition is maintainable, the Corporate Debtor has defaulted, and its defences are sham and intended merely to delay.



12. The Applicant/Operational Creditor filed written submissions vide diary no. 1895 dated 24.09.2025. Further, the Corporate Debtor also filed written synopsis vide diary no. 2028 dated 24.10.2019 and written submissions vide diary no. 1986 and 1988 dated 06.10.2025 which have been taken on record and not repeated herein for the sake of brevity.
13. Earlier in this matter, the order was reserved in February 2019 by the erstwhile bench, but since no order could be passed, the matter was put up before this bench for de novo hearing on 01.11.2021. Thereafter, after completion of the further pleadings filed by the parties, learned counsels representing both parties advanced elaborate submissions in support of their respective stands in the hearing held on 15.09.2025. The matter was accordingly heard at length, and orders were reserved.

IA No. 404 of 2020

14. During the pendency of the main petition (C.P. (IB) No. 357/ALD/2018), an Interlocutory Application being I.A. No. 404 of 2020 was filed on 05.03.2020 on behalf of the Corporate Debtor under Sections 65 and 76 of the Code, alleging that the Operational Creditor had initiated proceedings with a malicious intent by suppressing material facts.
15. It has been contended that the Operational Creditor has specifically stated in para no. 11 of the Petition that through the reply of the demand notice,



the Corporate Debtor has not raised any dispute whatsoever, in respect of the existence of debt or the quality of goods and services, despite the fact that the Corporate Debtor in its reply dated 31.08.2018 to the demand notice raised disputes both as to the quantum of claim and the quality of supplies.

16. It was further alleged by the Corporate Debtor that the Operational Creditor has made wrong and misleading averments in the Petition which is supported by an affidavit and in such case, it is apparent that initiation of the Insolvency was done with malicious conduct and such conduct amounted to concealment, thereby inviting penal consequences under the Code.
17. As submitted by the Corporate Debtor, the Operational Creditor has willfully and knowingly concealed that the Corporate Debtor had notified him of a dispute in respect of the unpaid operational debt and hence the Insolvency Application deserves dismissal with exemplary costs, and criminal proceedings ought to be initiated against the Operational Creditor and its authorized representative.

Reply filed by the Operational Creditor (in I.A. No. 404 of 2020)



18. The said application was opposed by the Operational Creditor, who in its reply filed vide filing no. 0902109000162018/8 dated 08.05.2022 and 0902109000162018/9 dated 29.12.2022 contended as follows:

- a.** The Operational Creditor contended that pleadings in the main IB Application No. (IB) 357/ALD/2018 were completed in February 2019 and order was reserved on 26.09.2019. The present IA is therefore belated, having been filed only when the matter was re-opened for hearing, and is intended to delay proceedings.
- b.** It is submitted that the IBC contemplates strict timelines, and no liberty can be granted to file additional documents at this belated stage. The application is thus liable to be dismissed on this ground alone.
- c.** The Operational Creditor denies that the documents sought to be introduced establish any pre-existing dispute. It is submitted that the letters and emails dated December 2017 and May 2018 are either general communications issued to all publishers or merely relate to reconciliation of accounts, and do not evidence any dispute specific to the Operational Creditor. Further, the request for supply statements in excel format was only an internal requirement of the Corporate Debtor, and non-compliance with the same cannot be construed as a dispute.
- d.** That it is further submitted that in the said letter dated 06.12.2017 as well as reminder letter dated 28.11.2017, it is stated that Corporate Debtor want invoices and supply statement in excel format. In this regard, it is submitted that Operational Creditor is not concerned with the change of software at Corporate Debtor's end. Operational



Creditor has supplied all the supply statement and invoices as it used to do in past. Further, sharing document in excel sheet is not advisable and acceptable in commercial transactions as it is easily edited and altered.

- e. That with respect to mail dated 29.05.2018 and the table annexed at page No. 10 of the application, it is submitted that the table showing the loss incurred by Corporate Debtor (at page No. 10) is not the attachment of email dated 29.05.2018. Corporate Debtor is trying to fabricate a document by annexing altogether different attachment to the email.
- f. That this fact can be established from the contents of the email dated 29.05.2018, which nowhere mention about the loss incurred or any table. It only states that the supply statement issue wise may be sent as per the excel format. Moreover, the name of the attached file also named as "Supply-Statement-Format.xlsx". Thus, it is clear that the attachment to the mail relates to format of excel sheet and not related to any loss sheet as tried to be submitted by Corporate Debtor.
- g. The Operational Creditor states that no such chart of losses was ever shared earlier and was brought up for the first time in the short counter-affidavit. The figures shown, such as "unsold department expenses" or "agent expenses on return", are without rationale or basis.
- h. The Operational Creditor relies on the decision of the *Hon'ble Supreme Court in Mobilox Innovations Pvt. Ltd. v. Kirusa Software Pvt. Ltd. (2018) 1 SCC 353*, to contend that the dispute must be pre-existing, i.e., prior to the demand notice under Section 8. No such dispute was raised prior to 20.08.2018. On the contrary,



payments continued up to June 2018 against earlier supplies, which evidences absence of dispute.

- i. It is further submitted that the reply dated 31.08.2018 is already part of record and there is no concealment. Several reminders for payment were also issued by the Operational Creditor through emails dated 29.03.2018, 19.04.2018, 28.04.2018, 07.05.2018, 08.06.2018, and 20.06.2018, which remain unpaid. Thus, the allegation of suppression or fraud is unfounded.
- j. In view of the above, the Operational Creditor prays that the IA filed by the Corporate Debtor under Sections 65 and 76 be dismissed and that the main IB Application be allowed.
- k. On these grounds, it is prayed that the IA under Sections 65 and 76 be dismissed, and the main IB Application be allowed.
- l. The IA was a belated attempt to delay the adjudication of the main petition, that all pleadings had long been completed, and that the documents now sought to be relied upon were always within the knowledge and possession of the Corporate Debtor but were never produced earlier. It was also urged that no pre-existing dispute was established by the Corporate Debtor prior to the issuance of demand notice.

Rejoinder filed on behalf of the Corporate Debtor (In I.A. No. 404 of 2020)

19. A rejoinder affidavit was thereafter filed vide filing no. 0902109005762020/1 dated 02.01.2022 by the Corporate Debtor stating as under:

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- a. The deponent, Director of the Corporate Debtor, has been duly authorized by Board Resolution dated 04.12.2018 to file the present rejoinder. The averments of the Operational Creditor's reply in paras 2-4 and 9 are matters of record and call for no response.
- b. The remaining averments of the reply (paras 5-8, 10-16, and 17-19) are specifically denied. It is contended that a notice of dispute dated 31.08.2018 was duly sent within 10 days of the demand notice raising specific disputes about the operational debt, as required under Section 8 of the IBC.
- c. There existed prior disputes regarding the quality of services, delay in supply of magazines, discrepancies in account statements, and such disputes were raised repeatedly even before receipt of the demand notice dated 20.08.2018.
- d. Further, it is submitted that the communications including an email dated 17.05.2018 show that the Corporate Debtor had sought reconciliation of accounts, but no resolution was reached. Reliance is placed on the judgment of the Hon'ble Supreme Court in *Mobilox Innovations Pvt. Ltd. v. Kirusa Software Pvt. Ltd.* to argue that once a notice of dispute exists, a Section 9 application is liable to be rejected under Section 9(5)(2)(d) of the Code.
- e. It is further alleged that the Operational Creditor has not approached this Tribunal with clean hands, and has suppressed material facts, thereby attracting penal consequences under Sections 65 and 76 of the Code.



- f. On these grounds, it is prayed that the instant IB Application be dismissed and that appropriate penal action be initiated against the Operational Creditor and its authorized representative.

FINDINGS AND ORDER

20. We have heard the arguments of the Learned Counsels appearing for both parties, Applicant/Operational Creditor and Respondent/Corporate Debtor and perused the pleadings, records, and exhibits/annexures marked thereto.
21. Before delving into the specific issues concerning the admission or rejection of the present application, it is noted that the application under Section 9 of the Code was filed before this Tribunal on 16.10.2018. In Part-IV of the present petition, the Applicant/Operational Creditor has specified the date of default as 31.08.2017, being the date of presentation of the invoice from which point the payments remained unpaid.
22. Accordingly, the application being filed on 16.10.2018, is well within the limitation period of three years from the date of default i.e. 31.08.2017.
23. Having heard the Learned Counsels appearing for the parties, and on perusal of the records, exhibits/annexures and after considering the arguments advanced by respective Learned Counsels, we find that the following issues are for consideration to be decided for admissibility or otherwise of this Application u/s 9 of the Code.
- A. Whether there is a Debt and Default.



- B.** Whether there is any Pre Existing Dispute.
- C.** Whether the Interlocutory Application (IA 404 of 2020) under Sections 65 and 76 of the IBC has merit.

A. Debt and Default

- 24.** As per the present Application filed by the Operational Creditor in Form 5, seeking initiation of CIRP against the Corporate Debtor is based on the outstanding dues mentioned in Part-IV of the Application amounting to Rs. 1,34,41,501.58/- in total, with the date of default being 31.08.2017. The basis for filing the present Application is that the Corporate Debtor and the Operational Creditor entered into various agreements for the supply of books, magazines etc. to the Corporate Debtor.
- 25.** The Operational Creditor has relied upon invoices raised from January 2016 to June 2018 aggregating to Rs. 4,95,96,469.43/-, out of which part-payments of Rs. 3,40,96,667/- are admittedly made by the Corporate Debtor. The net amount of Rs. 1,34,41,501.58/- is claimed as outstanding supported by invoices raised for magazines/books supplied between January 2016 and June 2018, after adjustment for unsold returns and prior transactions.
- 26.** To support its claim, the Applicant has relied on emails dated 29.03.2018, 19.04.2018, 28.04.2018, 07.05.2018, 08.06.2018 and 20.06.2018 reminding the Corporate Debtor of its dues. However, it is equally material



that the Corporate Debtor, vide its reply dated 31.08.2018 to the demand notice, specifically disputed the claim alleging discrepancies in accounts, non-supply of supporting documents (delivery challans, dispatch slips, Railway Receipts), and delayed supplies leading to losses.

27. Further, several agreements between the parties stipulate “sale or return” supply mechanism, mandatory supply statements, etc. On conjoint reading, it is evident that liability was contingent upon reconciliation of accounts, and payments were to be made only after substantiation of deliveries through prescribed documents. Non-production of such records by the Operational Creditor weakens the claim of undisputed operational debt.
28. Thus, while there may be financial transactions between the parties, and outstanding debts pertaining to some invoices raised by the Operational Creditor is being claimed amounting to Rs. 1,34,41,501.58/- as mentioned in the application filed u/s 9 but it cannot be denied that reconciliation of this amount is still pending as demanded by the Corporate Debtor for which allegations and counter allegations are being levelled by both parties producing the various emails exchanged between them, and hence, the alleged claim of debt of Rs. 1,34,41,501.58/- by the Operational Creditor cannot be said to be established as a ‘debt being in default’ in the sense as required under Section 9 of the Code after taking into account the definition



of debt in section 3(11), default in section 3(12) and dispute as defined in section 5(6) of the Code.

B. Whether there is any Pre-Existing Dispute

29. As regards there being any pre-existing dispute in respect of the claim made by the Operational Creditor. The Corporate Debtor has placed on record the following emails citing late supplies of various magazines:

- Mail dated 20.06.2015, sent by Corporate Debtor to Operational Creditor (Page 70 of the Short Counter Affidavit).
- Mail dated 09.06.2015, sent by Corporate Debtor to Operational Creditor (Page 71 of the Short Counter Affidavit).
- Mail dated 09.06.2015, sent by Corporate Debtor to Operational Creditor (Page 72 of the Short Counter Affidavit).
- Mail dated 10.04.2015, sent by Corporate Debtor to Operational Creditor (Page 73 of the Short Counter Affidavit).
- Mail dated 20.06.2015, sent by Corporate Debtor to Operational Creditor (Page 79 of the Short Counter Affidavit).
- Mail dated 21.12.2016, sent by Corporate Debtor to Operational Creditor (Page 80 of the Short Counter Affidavit).
- Mail dated 06.09.2016, sent by Corporate Debtor to Operational Creditor (Page 81 of the Short Counter Affidavit).
- Mail dated 11.02.2016, sent by Corporate Debtor to Operational Creditor (Page 82 of the Short Counter Affidavit).



- Mail dated 16.05.2016, sent by Corporate Debtor to Operational Creditor (Page 83 of the Short Counter Affidavit).
 - Mail dated 02.05.2017, sent by Corporate Debtor to Operational Creditor (Page 84 of the Short Counter Affidavit).
 - Mail dated 02.05.2017, sent by Corporate Debtor to Operational Creditor (Page 85 of the Short Counter Affidavit).
 - Mail dated 28.06.2016, sent by Corporate Debtor to Operational Creditor (Page 86 of the Short Counter Affidavit).
 - Mail dated 02.08.2016, sent by Corporate Debtor to Operational Creditor (Page 87, 88, 89 of the Short Counter Affidavit).
 - Mail dated 01.08.2017, sent by Corporate Debtor to Operational Creditor (Page 91 of the Short Counter Affidavit).
 - Mail dated 24.12.2016, sent by Corporate Debtor to Operational Creditor (Page 92 of the Short Counter Affidavit).
30. The relevant excerpts from the aforesaid emails dated 29.09.2014, 10.04.2015, 09.07.2015, 06.09.2016, 21.12.2016, 02.05.2017, 29.07.2017, 01.08.2017, are as under:
- i. **Email dated 29.09.2014:**
“Our Jamalpur book stall agent has complained that he is getting the supplies of your group magazines very late. Please revise his indent of Champak English from 10 to 05 copies and Champak (H) CD from 10 to 05 copies with immediate effect.”
 - ii. **Email dated 10.04.2015:**



“Our Andheri book stall agent has complained that he is getting the supplies of your magazines very late. Please look into the matter and ensure timely delivery.”

iii. Email dated 09.07.2015:

“Our Igatpuri book stall agent is getting all your supplies one month late by courier, please look in to the matter and arrange for delivery in time.”

iv. Email dated 06.09.2016 (from HW Mumbai Central and Churchgate Book Stalls):

“At Mumbai Central Stall and at Churchgate Stall, Delhi Press never gives delivery in time. They are always late in all deliveries as compared to open market arrivals of their publications. For This late delivery I have personally spoken to their officials at their WADALA office, but they are not improving. This is for your information and necessary action please. Kindly not and arrange for Fast Delivery and in time of their Publications.”

v. Email dated 21.12.2016:

“Our baroda bookstall agent has informed that he is getting the supply of all your magazines very late. Kindly arrange to send his supply through your local agent under proper acknowledgement.”

vi. Email dated 02.05.2017 (from Satna bookstall agent):

“Plz see the date of booking ghersobha April second and received dated 30/4/17 In from publisher send timely otherwise stop supply.”

vii. Email dated 29.07.2017:

“Please look in the complaint of AHW Barauni Book Stall Agent which is served from Patna branch regarding receiving late supply of



our magazines. Specilaly till 28/7/16 he has not received the Saras Salil of August 1st issue while it is available in local market from 21.7.2016 and July 2nd Grih Sobha, Women's Era and Champak (Hindi+English) received by him on 26/7/2016. We had discussed regarding this issue to Mr. Anil Mishra but he is failed to explain the facts. Please take it seriously & revert immediately, also let us know the name of responsible staffs.”

viii. Email dated 01.08.2017:

“We have been repeatedly informing you earlier that all our agents are complaining about late supply of your groups magazines resulting in poor sales. For the last two to three months things have deteriorated too much. Agents are getting the supply almost after the expiry dates. Please look in to the matter and ensure timely supplies.”

- 31.** In light of the above reproduced email communications, it is observed that the Corporate Debtor had consistently raised concerns about deficiency in service in terms of late or non-supply of the books and magazines between 2014 and 2017 regarding delayed supplies of the Operational Creditor's publications, often pointing out that the magazines were received after their commercial relevance had expired, despite being available in the open market earlier. These contemporaneous records demonstrate that the issue of delayed supplies was a recurring grievance and not a belated defense, well prior to the issuance of the demand notice, thereby supporting the Corporate Debtor's contention of a pre-existing dispute within the meaning



of Section 8(2)(a) of the Code as well as section 5(6) of the Code involving the quality of goods and services being disputed constantly before demand notice u/s 8 was issued.

32. Additionally, both the parties have also placed on record several emails and subsequent correspondence, where reconciliation of accounts was sought and discrepancies highlighted. The relevant excerpts from the emails exchanged between the parties regarding reconciliation of accounts are reproduced below:

i. **Email dated 17.05.2018:**

“While processing your accounts, we have found numerous discrepancies which need to be reconciled and rectified in order to arrive at a final amount.

You are kindly requested to depute an authorized person from your office to visit us after PRIOR APPOINTMENT, with all the relevant papers, to sort the issue and reconcile the accounts.”

ii. **Email dated 18.05.2018:**

“This has reference to your given below email regarding reconciliation of account. Herein you have not mentioned the name of the official who has sent the mail so that we may contact him for this purpose.

Kindly confirm which date is suitable for you and to whom we will contact for reconciliation of account at your office.

Inform us immediately so that we will take further necessary action at our end.”



iii. **Email dated 27.07.2018:**

“Thank you for your email. Mr. Arunjeet Banerjee had written to you that we will be out of town so to come the next week. We received a mail from your end stating that you have some other work and your tickets were already booked.

Nevertheless, I am back and have discussed your visit with Mr. Ashish Sarkar.

Your supply details from august 2017, have been received by us. The same needs to be studied and checked from our end.

Moment we are done with the checking, we will get back to you regarding a date for final reconciliation.”

33. We have carefully examined the email correspondences exchanged between the parties. The record discloses that as early as 17.05.2018, the Corporate Debtor, while processing the accounts, specifically pointed out discrepancies and sought deputation of an authorized representative of the Operational Creditor for reconciliation. This was followed by further communications dated 09.07.2018, 11.07.2018, and 27.07.2018, wherein the Corporate Debtor repeatedly emphasized the necessity of reconciling the accounts before finalizing any admitted liability.
34. On the other hand, the Operational Creditor has placed on record multiple emails dated 21.05.2018, 08.06.2018, 20.06.2018, 06.07.2018, and subsequent correspondence, to demonstrate that it had been actively



following up and even visited the office of the Corporate Debtor on 17.07.2018 for reconciliation. The Operational Creditor asserts that during such meeting, no dispute was raised by the deputed staff, whereas the Corporate Debtor contends that reconciliation is a prolonged process and was still underway and could not be completed but before the completion of reconciliation, the demand notice dated 20.08.2018 was issued.

35. From the above communications, it emerges that both parties were engaged in reconciliation discussions during the period of May-July 2018, with each side attributing delays to the other. The fact that repeated references to reconciliation of accounts were made prior to the issuance of the demand notice, coupled with allegations of discrepancies, indicates that there existed a genuine dispute inter se between the parties regarding the quantum of outstanding dues.
36. Therefore, the documents on record demonstrate that despite occasional attempts at reconciliation, there was recurring disputes regarding both quantum and quality of supplies prior to issuance of the Section 8 demand notice dated 20.08.2018.
37. As regards the email dated 30.08.2018 wherein Corporate Debtor requested the Operational Creditor for change in indent of their Kishanganj Rly Bookstall agent, the contention of the Operational Creditor is that such



instructions, coupled with payments made up to June 2018, demonstrate the absence of any dispute prior to the demand notice dated 20.08.2018. However, while this correspondence does indicate a continuing business relationship between the parties, it does not by itself extinguish the existence of disputes regarding reconciliation of accounts and supporting documents, which are evident from the record. Thus, the said communication cannot be treated as conclusive proof of absence of pre-existing dispute for the purpose of Section 9 proceedings.

38. Further, the reply dated 31.08.2018 to the Section 8 notice, we find that it is in the nature of a notice of dispute as contemplated in section 8(2)(a) of the Code expressly recording disputes relating to discrepancies in accounts, absence of delivery challans and railway receipts, losses due to delayed supply, and direct dealings by the Operational Creditor with stall agents.
39. The Corporate Debtor relies on judicial precedents including *Mobilox Innovations Pvt. Ltd. v. Kirusa Software Pvt. Ltd. (2018) 1 SCC 353*, which clarify that if a genuine and substantial dispute as to debt exists prior to the demand notice, the application under Section 9 must be dismissed. The analysis of emails and other correspondence corroborates that such disputes were indeed raised, discussed, and remained unresolved.



40. From the Application filed u/s 9, we find that the Applicant has placed on record multiple agreements entered between the parties from page no. 22 to 57 of the petition, wherein separate agreements were executed for different magazines, though containing substantially similar terms and conditions. For the sake of clarity, reference is made to one such agreement dated 20.09.2013, read with the clarifications dated 30.09.2013, which governed the supply on a 'Sale or Return' basis. The key clauses, which are common across most of the agreements and are material to the present dispute, are as follows:

- “1. Trade Discount chargeable by us will be 42% on gross sales.*
 - 2. Copies will have to be supplied by you purely on “SALE OR RETURN” basis, direct to our bookstalls at your own cost by either REGISTERED POST or RAILWAY PARCEL or BY HAND DELIVERY.*
 - 3. The unsold returns will be disposed of by us and the waste paper value thereof will be credited in your monthly sale accounts.*
 - 4. The first sale account will be submitted to you after three months excluding the month of the supply at our Bookstalls and the subsequent accounts will follow thereafter every month.*
-
- 12. Discrepancies in accounts, if any, must be reported to us within a fortnight of the receipt of our monthly account by you, failing which no claim for discrepancies will be entertained.*



13. A supply statement showing dispatches made every month must be sent to us within a week of the dispatch of the last supply during the month showing therein the number of copies, date and mode of dispatch with registration or R/R numbers and date of booking.

14. Payment will be made by AHW according to the sale figures shown by the Bookstall Agent but in case of discrepancies, the publisher will have to prove the receipt of supplies by the Bookstall Agents at the destination and only then the payments by A.H. Wheeler & Co. Pvt. Ltd. will be made for these proved deliveries.

.....

16. The reverse side of the Railway Receipts, which you will send to the Head Office, must be Rubber Stamped showing the name of your publication booked under the R/R for the convenience of our Agents. Alongwith the R/R you must enclose a dispatch slip mentioning the name of the periodical, issue, rate and the number of copies.”

41. Further, the Corporate Debtor has also produced charts of late supplies (at pages 25-26 of short counter affidavit). Upon perusal of the charts, it is evident that the pattern of delay is consistent across multiple issues, ranging from 4 to 12 days. The effect of such delay in the magazine trade is significant, as copies lose commercial value after the period of currency. Additionally, the Corporate Debtor has produced complaints from agents corroborating accumulation of unsold stock.
42. In light of the agreements executed between the parties, particularly the agreement dated 20.09.2013 read with clarifications dated 30.09.2013, it is



observed that the supply of magazines was governed on a “Sale or Return” basis. The contractual stipulations expressly provided that copies were to be supplied directly to the bookstalls at the cost of the Operational Creditor, within time, and that unsold returns would be credited in the monthly sale accounts. It is also material that the agreement placed a corresponding obligation on the Operational Creditor to provide Railway Receipts and dispatch slips indicating the particulars of each consignment, to enable the Corporate Debtor to verify deliveries and prepare accurate accounts.

43. The nature of the business relationship demonstrates that timely supply was the essence of the contract. Periodicals and magazines, whether weekly, fortnightly or monthly publications have readability life within that period only. If a magazine is delivered at the end of the prevailing week or fortnight, it may lose its significance from the reader’s perspective as the other stalls and local sellers would have already sold those periodicals and magazines. These items, therefore, being time-sensitive and perishable in market, must reach bookstalls before or at par with open-market availability. Delayed supplies would render such issues unsaleable, resulting in substantial unsold returns and business loss to the Corporate Debtor.



44. The emails on record from 2014 onwards, and more particularly those between 2015-2017, consistently complain of delayed supplies across multiple stalls, highlighting that agents were receiving magazines weeks after their market availability. This contemporaneous record corroborates the grievance that late deliveries directly affected sales, thereby undermining the contractual arrangement.
45. Also, in response to the demand notice, the Corporate Debtor, vide reply dated 31.08.2018, again raised the issue of delayed supplies, non-compliance with clauses relating to Railway Receipts, hand delivery challans, and reconciliation of accounts and contended that owing to the late supplies and breach of contract, it had to incur heavy losses on unsold copies. These assertions are fortified by email correspondences dated 17.05.2018, 09.07.2018, 11.07.2018 and 27.07.2018, which show reconciliation was actively sought before issuance of the demand notice.
46. Accordingly, when viewed in totality of the agreement clauses, the repeated email complaints from the Corporate Debtor, and its reply to the demand notice, we are of the considered view that genuine disputes existed regarding the timeliness of supply, reconciliation of accounts, and breach of contractual obligations well before the issuance of the demand notice. Such disputes are found to be of such nature that go to the root of the



liability to pay any debt arising out of goods supplied or services rendered as being supply of magazines and periodicals in time bound manner, and therefore fall within the ambit of pre-existing dispute as envisaged under Section 9 of the Code.

47. Thus, while invoices may show supplies, the dispute concerns both quantum and quality (timeliness). Hence, debt and default cannot be treated as undisputed if the concern for timely supply is being raised repeatedly and no reconciliation is done for losses incurred due to delay in supply. Applying the above test, as held in *Mobilox Innovations Pvt. Ltd. v. Kirusa Software Pvt. Ltd. (2018) 1 SCC 353*, it is clear that disputes regarding reconciliation and delayed supplies existed well before the demand notice which cannot be termed illusory, hypothetical or misconceived.
48. Hence, upon detailed analysis of the documents, agreements, emails, delay charts, and written submissions, we find that there existed substantial dispute regarding both the quantum and quality of debt prior to issuance of demand notice and filing of the petition, reflected in correspondence, attempts at reconciliation which was still ongoing, failure to adhere to documentation obligations, and evidence of supply delays. The agreements required strict compliance with supply verification and reconciliation



protocols, which were not fully satisfied or evidenced, as raised by the Corporate Debtor. The Operational Creditor has not demonstrated that the claimed debt is undisputed, due, and payable within the statutory scheme of the IBC.

49. Accordingly, the application under Section 9 deserves to be dismissed for want of satisfaction of the statutory requirements, specifically the absence of an undisputed operational debt and existence of substantial, pre-existing dispute

C. **Whether the Interlocutory Application under Sections 65 and 76 of the IBC has merit.**

50. The basis of the present Interlocutory Application filed under Sections 65 and 76 of the Code rests upon the allegation that the Operational Creditor, while initiating proceedings under Section 9, failed to disclose the existence of disputes which, according to the Corporate Debtor, had been raised on multiple occasions prior to the issuance of the demand notice. The Applicant contends that such concealment was deliberate and misleading, thereby attracting the penal consequences contemplated under the provisions of the Code.
51. Upon careful consideration of the application, the reply, rejoinder, and the documents placed on record, it is noted that the foundation of the grievance



under this IA is that the disputes regarding delayed supplies, reconciliation of accounts, and deficiencies in services were continuously being communicated by the Corporate Debtor through various emails, letters, and correspondence, much prior to the issuance of the demand notice. The Corporate Debtor, therefore, urges that the Operational Creditor's omission of these facts amounts to suppression and warrants penal action under Sections 65 and 76.

52. The Operational Creditor, on the other hand, has denied the allegations and has contended that the plea of concealment is without substance, since the Corporate Debtor was fully heard in the main proceedings and all disputes raised stand considered in the context of Section 9. It is further submitted that the present IA is misconceived and only intended to delay the adjudication of the main petition.
53. In light of the material placed, we are of the view that the disputes between the parties have already been taken note of while considering the maintainability of the main petition under Section 9 of the Code. The fact that disputes were raised prior to issuance of the demand notice goes to the root of the maintainability of the petition under Section 9 and has been already addressed. Merely because the Operational Creditor, in its pleadings, presented its version of facts which, according to the Corporate



Debtor, did not fully reflect the extent of disputes, cannot by itself lead to the inference that the proceedings were initiated with a malicious intent or by concealment so as to attract penal consequences under Sections 65 and 76 of the Code.

- 54.** Accordingly, such averments for initiating proceedings under Sections 65 and 76 are of no material significance in the context of the present case, except that at the highest it may be inferred that the Operational Creditor's submissions were incomplete and not fully justified. This by itself cannot justify invocation of penal provisions.
- 55.** Therefore, the Interlocutory Application under Sections 65 and 76 is liable to be dismissed, as the record does not establish malicious prosecution, but reflects a bona fide commercial contest arising from longstanding relations and disputed transactional accounting. Therefore, this I.A. is dismissed.
- 56.** Accordingly, CP (IB) No. 357/ALD of 2018 filed under Section 9 of the Code, along with I.A. No. 404 of 2020 under Sections 65 and 76 of the Code, stands dismissed.

-Sd-
(Ashish verma)
Member (Technical)

-Sd-
(Praveen Gupta)
Member (Judicial)

Date: 07.10.2025