NATIONAL COMPANY LAW APPELLATE TRIBUNAL

NEW DELHI

COMPANY APPEAL (AT) (INSOLVENCY) NO.415/2020

(Arising out of judgment and order dated 27th January, 2020 passed in Company Petition No. CP (IB) 3753/MB/C-IV/2018 by National Company Law Tribunal, Mumbai)

In the matter of:

Naresh Sevantilal Shah
Having Office at,
103/C, Thosar House,
Hanuman Cross Road No. 1,
Near Shivleela Hotel,
Ville Parle (East), Mumbai- 400057 **...Appellant**

Versus

1. **Malharshanti Enterprises**
   59A/12, Nagari Niwara Parisad,
   Gen A K Vaidya Marg,
   Film City Road, Goregaon (East)
   Mumbai: 400063

2. **Jitendra Kumar Rambaran Yadav**
   Interim Resolution Professional
   Office at, +6No. 11, Singh House, 2nd Floor,
   23, Ambalal Doshi Marg,
   Mumbai: 400001 **…Respondents**

Present:

Advocates for Appellant: Mr. Aditya Manubarwala, Mr Deepak Joshi, Mr. Amir Arsiwala and Mr. Varun Verma.

Advocates for the Respondent: Mr. Kartik Sethi, Mr. Dhaval Deshpande and Mr. Yash Jariwala.

J U D G M E N T

(19th January, 2021)

Mr. Balvinder Singh, Member (Technical)

1. The present appeal has been preferred by Naresh Sevantilal Shah (hereinafter referred to as 'Appellant') under section 61 of the Insolvency and Bankruptcy Code (hereinafter referred to as 'I&B Code') challenging the impugned order dated 27th January, 2020 passed by National Company Law Tribunal, Mumbai Bench (hereinafter referred as 'Adjudicating Authority') in Company Petition No. CP (IB) 3753/MB/C-IV/2018 under which Corporate Insolvency Resolution Process (CIRP) was initiated against the Corporate Debtor.
2. The brief facts of the case are that the Respondent No. 1 i.e. Malharshanti Enterprises (hereinafter referred to as 'Operational Creditor') filed a Company Petition under section 9 before the Adjudicating Authority seeking initiation of Corporate Insolvency Resolution Process (CIRP) against CAN Enterprises Private Limited (hereinafter referred as 'Corporate Debtor') on the grounds that the Corporate Debtor failed to make payment of a sum of Rs. 94,64,770 (Rupees ninety-four lakh sixty-four thousand seven hundred and seventy only) as principal and Rs. 68,66,919 (Rupees sixty-eight lakh sixty-six thousand nine hundred nineteen only) as interest as on 22nd August, 2018.
3. Corporate Debtor is a private company limited by shares and incorporated on 11th September, 2009 under the Companies Act, 1956 and the Appellant is the suspended Director cum Promoter shareholder of the Corporate Debtor. The Operational Creditor is engaged in the business of the construction of buildings. The Corporate Debtor hired the service of the Operational Creditor by a Work Order dated 25th May, 2014 for carrying out the construction for

one of its project viz. 'Rose Villa', which required the construction of stilt plus six upper floors based on the construction drawings to be issued by the architect of the Corporate Debtor. The Adjudicating Authority heard the parties and admitted the claim of the Operational Creditor and ordered the initiation of CIRP of the Corporate Debtor. The Appellant on being aggrieved by the Order of the Adjudicating Authority, have preferred the present Appeal.

4. It is submitted by the Learned Counsel for the Appellant that the Operational Creditor first sent a demand notice under section 8 of the I&B Code to the Corporate Debtor on 2nd December, 2017. On the basis of the first demand notice, the Operational Creditor filed a petition under section 9 of the I&B Code, being CP (IB) 1823/2017. In the first petition, the Corporate Debtor raised several pre-existing disputes in its affidavit in reply. On 13th August, 2018, the Adjudicating Authority dismissed the first petition with the following finding "On hearing such arguments, the Petitioner Counsel having realized that the petition is defective because damages claim has been included in the petition, he has asked for withdrawal of this petition with a liberty to proceed against the Corporate Debtor with a correct claim as envisaged under this code. In view of this submission made by the Petitioner Counsel, the Company Petition is hereby dismissed giving liberty to the Petitioner to come with the correct claim before this bench."

5. It is further submitted on behalf of the Appellant that on 13th March, 2018, the Corporate Debtor sent a detailed legal notice to the Operational Creditor setting out several pre-existing disputes as to quality of work and delay in completion of work. By this communication, a counter claim was also raised against Operational Creditors. Subsequently on 10th April, 2018, a notice invoking arbitration was sent to the Operational Creditor. Thus arbitral proceedings under section 21 of the Arbitration & Conciliation Act, 1996,

were pending from 10th April 2018. Subsequent to this the Operational Creditor sent another demand notice under section 8 of I&B Code on 23rd August, 2018. Corporate Debtor replied to second demand notice within 10 days of receiving it and raised several pre-existing disputes. On the basis of second demand notice, the Operational Creditor filed CP (IB) 3753/MB/C-IV/2018 in which the Impugned Order came to be passed.

6. It is contended by the learned counsel for the Appellant that, prior to the second demand notice, Corporate Debtor already invoked arbitration. Therefore, there was a pre-existing dispute in the form of pending arbitral proceedings and for this reason alone, the impugned order ought to be set aside. Reliance is placed by the learned counsel for Appellant on **Pramod Yadav & Anr. Vs. Divine Infracon Pvt. Ltd.** Company Appeal (AT) (Ins) 251/2017 particularly paragraphs 9 and 10 which we have reproduced herein under:

> 9. From the aforesaid letter, it is clear that the 'Corporate Debtor' made request under Section 21 of the Arbitration and Conciliation Act, 1996, which reads as follows:
>
> > "21. Commencement of arbitral proceedings. — Unless otherwise agreed by the parties, the arbitral proceedings in respect of a particular disputed commence on the date on which a request for that dispute to be referred to arbitration is received by the respondent."
>
> 10. In view of the fact that the arbitral proceedings commence since the request made under Section 21 of the Arbitration and Conciliation Act, 1996, we hold that on commencement of arbitral proceedings, it is rightly

pleaded that there is an existence of dispute and therefore, the petition under Section 9 was not maintainable.

7. It is further contended on behalf of the Appellant that the impugned order in paragraph 19-22, holds that arbitral proceedings were not before first demand notice and therefore were not pre-existing dispute. Reliance was placed upon the Judgment of **Dinesh Gupta vs. Hajura Singh Bhim Singh & Anr., Company Appeal (AT) (Insolvency) No. 99 of 2018** however the reliance on the same was misplaced as in that case the first petition was dismissed on technical grounds (demand notice not on OC's letterhead). However, in the present case, the first petition was not dismissed on technical grounds, but because Operational Creditor had made an incorrect claim. Thus the relevant date for determining whether there was a pre-existing dispute was the date of Second demand notice, i.e. 23rd August, 2018, and the notices raising a counter-claim and invoking arbitration were prior to that i.e. 13th March, 2018 & 10th April 2018 respectively.
8. It is stated on behalf of the Appellant that in paragraph 33 of the impugned order, reply dated 13th December, 2017 to the first demand notice is quoted, which clearly shows that work was not completed. Paragraphs 36 & 37 of the impugned order states that Corporate Debtor has certified work done by the Operational Creditor without pointing out any defects. Reliance is placed on certain Architect's Reports. However, a perusal of these reports shows several defects have been pointed out in the completion of the work. It is submitted that the Adjudicating Authority cannot go into the merits of these defects to decide whether they are major defects or minor defects.
9. The is further stated on behalf of the Appellant that in view of the pending disputes and halted work at the site which resulted in delayed execution of the

work order, the Appellant as well as the Operational Creditor entered into a memorandum of understanding in respect of completion of work. The said memorandum was executed vide letter dated 25th September, 2015. The said memorandum was records that the Operational Creditor agreed to complete the project by 10th October, 2014 for a full and final settlement amount of Rs. 5 lakhs. Admittedly, Operational Creditor did not complete the work within this time frame and sought waiver of penalty clause by way of his letter dated 12th December, 2015. Thus Operational Creditor guilty of having delayed the project. This is also pre-existing dispute. This aspect has not been adverted to or answered by the Operational Creditor at all even during the oral submissions. The Operational Creditor relies on self-serving emails by conveniently ignores the architect's reports, memorandum dated 25.09.2015 because of the disputes between the parties, his own emails of unilateral extension of the project work and his own email dated 29th June, 2015 itself admitting that "maximum trouble is on the first & second floor only & that too on west side due to heavy rains. Presently our focus is on enhancement of performance of works carried out till date."

10. It is contended by the Learned Counsel for Appellant that the impugned order erroneously made substantial findings on pre-existing disputes in essentially a summary proceeding, thus wishing away the powers of the arbitral tribunal which were specifically invoked by the Appellant on 10th April, 2018 a good four months prior to the demand notice by the Operational Creditor.

11. It is further contended on behalf of the Appellant that the Adjudicating Authority in its impugned order held that even though interest is not payable, the second petition is still maintainable. However, even as per the ledger accounts produced by the Operational Creditor, even the principle amount as stated in the impugned order is at variance with that of the ledger, further no

interest amount is payable or claimed. Thus the entitlement of Operational Creditor to interest along with principle (as claimed in the second demand notice) is also in dispute and is thus a pre-existing dispute.

12. It is also submitted by the Appellant that the Operational Creditor has claimed payment on account of "Additional Work" allegedly not covered by the Work Order. However, the Operational Creditor has not produced any documents before the Adjudicating Authority or this Appellate Tribunal justifying this Additional Work. There is no document establishing the payment terms for this Additional Work. Rather, Operational Creditor not even complete the work set out under the Work Order.

13. It is also submitted by the Learned Counsel for the Appellant that even otherwise, without any written agreement, operational creditor would have to prove its entitlement to payment for any "Additional Work" as damages to be claimed in appropriate civil proceedings. As per the clause 20.02 of the Work Order, any "Additional Work", even if undertaken, was to be compensated in accordance with that clause, and in no other way. Thus there is a pre-existing dispute as to whether the Operational Creditor is entitled for any payment on account of "Additional Work" or audited ledger copy to substantiate its claim. Audited books of accounts and financial statements have certain sanctity in the eyes of law.

14. Per contra, learned counsel for Operational Creditor submitted at the outset that the Appellant has raised fallacious and belated defenses and that too after approximately after 2 years of completion of work. It is submitted that the debt of the Operational Creditor, as a contractor emanates out of the work order dated 25th May, 2014 in lieu of which the Operational Creditor successfully constructed a residential building known as 'Rose Villa' consisting of stilt plus six floors including the additional works. The

completed site was thereafter handed over to the Appellant on 16th November, 2015. Demobilization took place on 19th November, 2015. However, it is submitted by the learned counsel that some workforce remained on site till 24th December, 2015, qua additional works. During the progress of the work, the Operational Creditor raised 20 invoices for the contractual civil work and 5 invoices for the additional work.

15. It was further submitted on behalf of Operational Creditor that during the completion of the work, and after completion of work and till January 2017, the Operational Creditor issued various emails and letters to the Appellant, informing the Appellant about raising RA Bills, the overall updates of the projects, delay in project due to factors solely attributable to the appellant, additional works and seeking release of payments from the corporate debtor. Not even a single communication made by the Operational Creditor was responded to by the Corporate Debtor. It is submitted that the Corporate Debtor responded for the first time only in its reply date 13th December, 2017 which was the reply to the notice issued by the Operational Creditor under Section 8(1) of I&B Code dated 02nd December, 2017

16. It was also submitted by the learned counsel for the Operational Creditor that the first Section 9 petition was withdrawn on technical grounds, as reflected in the order passed by the Adjudicating Authority dated 13th March, 2018. It was only thereafter that the Corporate Debtor chose to issue an arbitration notice, at a time that the Operational Creditor herein was curing the technical defects in question. It is further submitted that the invoices forming the foundation of the operational debt formed part of the first notice under Section 8(1) of I&B Code dated 02nd December, 2017 and also formed part of the second notice under Section 8(1), I&B Code dated 23rd August, 2018. It is submitted that the moment the invoices underlying the operational debt were

served upon the Corporate Debtor on 02nd December, 2017, there was no longer any question of a subsequent arbitration notice being issued. Under Section 21 of the Arbitration and Conciliation Act, 1996, the arbitration notice triggers commencement of an arbitration proceeding. In this case, the arbitration notice was issued on 10th April, 2018, which is subsequent to the invoices underlying the operational debt being served upon the Corporate Debtor on 02nd December, 2017.

17. Reliance was placed by the learned counsel for the Operational Creditor on the judgment rendered by the Apex Court in **Mobilox Innovations Pvt. Ltd. vs Kirusa Software (P) Ltd. reported at (2017) 1 SCC OnLine SC 353**. It was held by the Hon'ble Supreme Court that the 'existence of the dispute' and/or the suit or arbitration proceeding must be pre-existing – i.e. it must exist before the receipt of the demand notice or invoices as the case may be.

18. It was contended by the learned counsel for Operational Creditor that the Appellant also raised an issue that additional works were never performed, but Appellant in reply to the first demand notice admitted that additional works were performed.

19. It was further stated by the learned counsel for the Operational Creditor that the emails were sent to the Corporate Debtor seeking release of payments, providing regular updates on the project, raising of RA Bills, continuously reminding the appellant to seek municipal approval for continuation of work as RCC work was on hold for more than 72 days. Several emails were referred to by the counsel for the Operational Creditor (dated 12.05.2015, 14.03.2015, 24.06.2015, 29.06.2015, 22.07.2015, 28.08.2015, 05.10.2015, 21.10.2015, 16.11.2015, 03.12.2015, 12.12.2015, 08.01.2016, 01.02.2016) which were sent to the Appellant which highlighted performance of additional works and related aspects including delay and enhancement of performance. In particular

reference was made to the email dated 27th October, 2015 wherein it was informed that the work got delayed again due to factors beyond the control of the Operational Creditor. On 22nd November, 2015, an e-mail was sent with the subject "successful completion of civil work" which informed that the workers were still attending additions and alterations.

20. It was also submitted that the emails (dated 19.02.2016, 26.02.2016, 04.04.2016, 23.05.2016, 09.07.2016, 15.10.2016 and 02.11.2916) were issued seeking payment of money and confirmation of ledger account and the email dated 30th January, 2017 was sent seeking settlement of dues as it had been more than 15 months since the work was completed. Therefore, it is submitted that right from July 2014 till the end of January 2017, Operational Creditor raised various communications which were not replied to, even once.

21. It was also submitted that the Operational Creditor issued a legal notice for recovery on 29th March, 2017, which was not replied to by the Appellant. All the invoices raised qua contractual and civil works were also duly acknowledged by the staff of the Appellant. Thereafter, the Operational Creditor invoked the I&B Code, 2016 and issued a notice under Section 8 of the said Code in the month of December, 2017. It is only then that for the first time that the Appellant issued a reply raising frivolous disputes. Furthermore, the Appellant in the appeal relies upon some emails and that too in isolation. The contention of the Appellant that there is a pre-existing dispute therefore gets negated as for the first time, it is only in the reply to the notice under Section 8 of I&B Code, 2016, that the Appellant has raised concerns over few issues.

22. Learned counsel for the Operational Creditor further submitted that other contentions of the Appellant such as violation of the work order, non-performance of additional work, abandonment of work site an engagement of

third parties for completion of work, delay in performance of work has been responded to by the Operational Creditor. It is submitted that qua abandonment, the Operational Creditor informed in advance regarding handing over of work site on 16th November, 2015 but till 24th December, 2015, the labor of Operational Creditor was working at the site would tantamount to abandonment. Hexagon Consultants even issued structural ability certificate to the municipality in the month of august, 2014. Moreover, the Municipal Corporation, Greater Bombay vide letter dated 07th September, 2016 issued Occupation Certificate ('OC') to the Appellant. After obtaining the said OC and selling many flats of the project, the Appellant blows hot and cold and raises frivolous disputes.

23. It was further stated that regarding the reports rendered by the architect learned counsel submitted that the architect found the work "okay" pointing out minor discrepancies. The discrepancies, if were not removed by the Operational Creditor, would have definitely found mention in the subsequent architect reports. The Operational Creditor cured all the discrepancies pointed out by the architect. If there were any discrepancy, the appellant couldn't have obtained Occupation Certificate from municipality.

24. It was further submitted that in the rejoinder additional documents were annexed by the Appellant without permission from this Appellate Tribunal, though the same did not form a part of the record of the Adjudicating Authority. The Operational Creditor denied the authenticity of these documents and stated that there was no opportunity to deal with these documents on affidavit. It is submitted that both the reports of August, 2020 and February, 2018 have been prepared subsequent to the expiration of defect liability period of one year in November, 2016. The project was handed over to the Appellant in November, 2015, but the said reports pertain to period 3-

5 years after completion of project and at this juncture, the two reports cannot be relied upon.

25. It was further submitted by the learned counsel for Operational Creditor that qua limitation, the last payment was made by the Corporate Debtor on 29th September, 2015, which is confirmed by Operational Creditor's bank certificate dated 23rd April, 2018. The last invoice was raised by operational Creditor in January, 2016. The second application was filed in September, 2018. Therefore, even if the last date of payment is considered to be the date of default even then the second application cannot be said to be time barred under Section 137 of the Limitation Act.

26. It was further submitted that on 05th September, 2019, oral arguments were concluded before the Adjudicating Authority. On the very next date, the Appellant entered into an inter corporate loan agreement with the Financial Creditor for a paltry sum of Rs. 1 lakh only and deprived the Operational Creditor to be the sole member of the Committee of Creditors comprising only of the Operational Creditor. In the appeal and rejoinder, the Appellant states that it has an asset base of rupees seven crores. Therefore, it is submitted by the learned counsel there was no need for the Appellant to obtain a loan of rupees one lakh from the Financial Creditor. The said transaction has been confirmed by them in first minutes of the meeting. Thus, the Financial Creditor was brought into the scheme with the oblique motive of ousting the Operational Creditor.

27. It was further stated by the learned counsel that Regulation 14 of Insolvency and Bankruptcy Board of India (IRP for Corporate Persons), 2016 provides for determination of amount of claim by the Resolution Professional and its adequately empowered to revise the amount of the claim admitted. Therefore, whether the debt is crystallized or not or whether the interest is recoverable or

not can be left to the discretion of the Resolution Professional to decide. The material test results and the insurance policies of the labor and the photographs that show 83.55% completion of project work show that there was absolutely no dispute between the Appellant and Operational Creditor till handing over of the said project.

28. It was contended by the Learned Counsel for the Operational Creditor that the dispute was raised for the first time by the Appellant only when Operational Creditor invoked the provisions of I&B Code, 2016. The Appellant had throughout maintained quietus during the progress of the work, completion of work in 2015 and till the month of December, 2017. The Appellant was issued Occupation Certificate by Municipal Authorities in September, 2016. The Operational Creditor issued several communications demanding payment, but to no avail. The claims are within limitation. Operational Creditor has disputed the additional documents. It was also submitted that the Appellant did not responded to Operational Creditor's CA's request for confirmation of accounts.

29. We have heard the arguments of the Learned Counsel for the parties and perused the records. The question that arises for consideration is as follows:

a) Whether there was a pre-existing dispute between the parties and weather the pre-existence of dispute shall be seen from the date of the first demand notice dated 2nd December 2017 or the second demand notice dated 23rd August, 2018?

b) Whether the Adjudicating Authority rightly allow the petition of the Operational Creditor under section 9 of I&B Code?

30. In the case of **Mobilox Innovations Pvt. Ltd. vs Kirusa Software (P) Ltd. reported at (2017) 1 SCC OnLine SC 353** the Hon'ble Supreme Court held

as to what are the facts to be examined by the Adjudicating Authority while examining an application under section 9 of I&B Code which is reproduced below:

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

"34. Therefore, the adjudicating authority, when examining an application under Section 9 of the Act will have to determine:

i. Whether there is an "operational debt" as defined exceeding Rs.1 lakh?
ii. Whether the documentary evidence furnished with the application shows that the aforesaid debt is due and payable and has not yet been paid? And
iii. Whether there is existence of a dispute between the parties or the record of the pendency of a suit or arbitration proceeding filed before the receipt of the demand notice of the unpaid operational debt in relation to such dispute?

> If any one of the aforesaid conditions is lacking, the application would have to be rejected.
>
> Apart from the above, the adjudicating authority must follow the mandate of Section 9, as outlined above, and in particular the mandate of Section 9(5) of the Act, and admit or reject the application, as the case may be, depending upon the factors mentioned in Section 9(5) of the Act."

From the above decision it is clear that the existence of the dispute must be pre-existing i.e., it must exist before the receipt of the demand notice or invoice. Section 9 of the IBC makes it very clear for the Adjudicating Authority to admit the application "if no notice of dispute is received by the Operational Creditor and there is no record of the dispute in the information utility." In the absence of any existence of a dispute between the parties or the record of the pendency of a suit or arbitration proceeding filed before the receipt of the demand notice of the unpaid 'Operational Debt'. Consequently, the application cannot be rejected under section 9 and is required to be admitted.

31. It is apparent from the records that the Corporate Debtor had not raised any objection pertaining to the work performed by the Operational Creditor prior to the first demand notice dated 2nd December, 2017. It was on 13th December, 2017 when the Corporate Debtor responded for the first time in its reply to the notice issued by the Operational Creditor under Section 8(1) of I&B Code. We have noted that a large number of email communications has been made by the Operational Creditor and not even a single response was made by the Corporate Debtor raising such disputes.
32. The Contention of the Appellant that the relevant date for determining whether there was a pre-existing dispute was the date of second demand notice, i.e. 23rd August, 2018 and not the first demand notice dated 2nd

December, 2017 as the first petition was dismissed by the Adjudicating Authority as the Petitioner Counsel had asked for withdrawal of the first petition due to incorrect claims made under first application, with a liberty to proceed against the Corporate Debtor with a correct claim as envisaged under I&B Code.

The above Contention raised by the Appellant cannot be sustained. The Adjudicating Authority has rightly relied upon the ratio laid down by this Tribunal in the case of **Dinesh Gupta vs. Hajura Singh Bhim Singh & another, Company Appeal (AT) (Insolvency) No. 99 of 2018** wherein is was held that:

> "6. On hearing the parties, as we find that there was no dispute in existence prior to the 1st demand notice issued under Section 8(1) of the I&B Code and the Corporate Debtor disputed the claim about quality only after issuance of 1st demand notice, therefore, after withdrawal of 1st application under Section 9 on technical grounds and issuance of fresh demand notice, the application under Section 9 filed by Respondent was maintainable."

33. The Appellant argued that the Adjudicating Authority misplaced its reliance on the above Judgment as in that case the first petition was dismissed on technical ground. However, in the present case, the first petition was not dismissed on technical ground but because Operational Creditor had made an incorrect claim.

This argument of the Appellant is turned down as firstly the above Judgment was mainly pointing out that there should be no dispute in existence prior to the 1st demand notice issued under Section 8(1) of the I&B Code. The

Appellant has wrongly emphasized on the word 'technical ground' and not the ratio that was laid down under the judgment. Secondly, it is the Adjudicating Authority who shall observe whether the ground on which the first application was dismissed was a technical ground or not.

34. It is apparent from the records placed before this tribunal that Corporate Debtor have sent a legal notice on 13th March, 2018 setting out several pre-existing disputes as to quality of work and delay in completion of work and also raised a counter claim against the Operational Creditor. The Corporate Debtor also sent a notice invoking arbitration on 10th April, 2018. These issues were raised after the issuance of the first demand notice. Thus there were no disputes existing prior to the issuance of first demand notice.

35. The arbitration notice was sent after the issuance of the first demand notice but prior to the issuance of second demand notice when the Operational Creditor was busy in removing the defects in its first petition. This exhibits that the intention of the Appellant behind this was to misuse the provisions under the Code and to intentionally delaying the process of law. There were no objections raised in relation to quality of work prior to the issuance of first demand notice and the work done by the Operational Creditor was in fact certified by the architect appointed by the Corporate Debtor. Moreover, the Municipal Corporation in September, 2016 issued Occupation Certificate to the Appellant. If there were any discrepancies, the appellant could not have obtained Occupation Certificate from municipality. This also shows that all the defects pointed out by the architect have been timely rectified within the appropriate time, so that the Municipal Corporation found it appropriate to issue the Occupation Certificate.

36. In the light of the above observations and the records placed before us. We are of the view that there was no dispute existing prior to the first demand

notice and only disputes raised prior to the first demand notice are relevant to determine its pre-existence and disputes raised thereafter are totally irrelevant for the same. Also the arbitration was invoked after the first demand notice. Thus the Adjudicating Authority have rightly concluded that there was no dispute existing prior to the demand notice issued under section 8 of I&B Code.

37. Therefore, we are of the considered opinion that there is no reason for interference with the impugned order passed by the Adjudicating Authority. Hence Appeal is dismissed. No order as to costs.

(Justice Jarat Kumar Jain)
Member (Judicial)

(Mr. Balvinder Singh)
Member (Technical)

(Mr. V.P. Singh)
Member (Technical)

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