

IN THE NATIONAL COMPANY LAW TRIBUNAL
JAIPUR BENCH

CORAM: SHRI DEEP CHANDRA JOSHI,
HON'BLE JUDICIAL MEMBER

SHRI PRASANTA KUMAR MOHANTY,
HON'BLE TECHNICAL MEMBER

CP No. (IB)- 253/9/JPR/2019

(Under Section 9 of the Insolvency and Bankruptcy Code, 2016 Read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016)

IN THE MATTER OF:

KARVY FORDE SEARCH PRIVATE LIMITED

...Operational Creditor

Versus

DROPBASE SOFTWARE PRIVATE LIMITED

...Corporate Debtor

MEMO OF PARTIES

Karvy Forde Search Private Limited

R/o Karvy Gateway, Plot No. 38 & 39
Financial District, Nanakramguda,
Hyderabad (TG)- 500032

...Applicant

VERSUS

Dropbase Software Private Limited

R/o 2/12, Malviya Nagar,
Jaipur, Rajasthan- 302017

...Respondent

AND IN THE MATTER OF
IA (IBC) NO. 428/JPR/2021

MEMO OF PARTIES

Dropbase Software Private Limited

R/o Room 1, Basement, Shop No. S-40,
 JDA Complex Front of Post Office,
 Murlipura Scheme Jaipur, Rajasthan- 302023

...Applicant

VERSUS

Karvy Forde Search Private Limited

R/o Karvy Gateway, Plot No. 38 & 39
 Financial District, Nanakramguda,
 Hyderabad (TG)- 500032

...Respondent

For the Applicant : Sandeep Taneja, Adv.

For the Respondent : Prashant Mehta, Adv.
 Arush Kumar, Adv.
 Dhruv Chawala, Adv.

Order Pronounced On:20.10.2022

ORDER

Per: Shri Deep Chandra Joshi, Judicial Member

1. This Application is filed by M/s Karvy Forde Search Private Limited through its authorised signatory Mr Gautam Vohra ('Operational Creditor' / 'Applicant') seeking to initiate Corporate Insolvency Resolution Process ('CIRP') against Dropbase Software Private Limited ('Corporate Debtor' / 'Respondent'), under Section 9 of the Insolvency and Bankruptcy Code 2016

(‘IBC’ / ‘Code’) read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 (‘Rules’).

2. The Applicant, M/s Karvy Forde Search Private Limited, is engaged in the business of providing human resources management and consultancy services by way of recruitment, training, and business process outsourcing. Their registered office is located at: Karvy Gateway, Plot No. 38 & 39, Financial District, Nanakramguda, Hyderabad, Telangana – 500032. The alleged Default on the part of the Respondent for the non-payment of operational dues amounts to Rs. 1,88,27,922/- (Rupees One Crore Eighty-Eight Lakhs Twenty-Seven Thousand Nine Hundred and Twenty-Two Only) exclusive of Tax Deducted at Source (‘TDS’) and interest.
3. The Corporate Debtor, Dropbase Software Private Limited, is a private limited company incorporated under the Companies Act, 2013 on 19.08.2014 having CIN: U72900RJ2014PTC046095. The Respondent has its office situated at - 2/12, Malviya Nagar, Jaipur Rajasthan – 302017. The Corporate Debtor has an Authorised Share Capital of Rs. 4,00,000/- (Rupees Four Lakhs Only) and Paid-Up Share Capital of Rs. 1,79,360/- (Rupees One Lakh Seventy-Nine Thousand Three Hundred and Sixty Only).
4. The details of the transactions leading to the filing of this Application as averred by the Applicant *vide* Diary No. – 2137/2019 dated 30.09.2019 are as follows:

- a. The Respondent is engaged in the business of providing logistic services. The Applicant and the Respondent entered into a Master Service Agreement on 20.11.2015 ('First Agreement') for rendering human resource management and consultancy services. These services were rendered from 20.11.2015 to 14.08.2018 wherein the payment terms were on a collect and pay basis and the Respondent was required to make advance payment.
- b. The First Agreement between the parties was revised on 15.05.2018 ('Revised Agreement') whereby the payment terms were revised. As per the Revised Agreement, the Respondent can make payment of invoices
- i. Either within 45 days wherein the applicable fee would be charged at the rate of 8.5% on total pay-out of the month,
 - ii. Or within 60 days wherein the applicable fee would be charged at the rate of 9% on total pay-out of the month.
- c. The Applicant used to raise the invoice latest by sixth day of the month. Consequently, it raised the invoice for services provided in the month of April 2018 ('April Invoice') as per terms and conditions mentioned under the First Agreement. This April Invoice was payable by the end of the month. It had raised two invoices for May 2018. The former invoice of May 2018 corresponds to services rendered from 01.05.2018 to 14.05.2018 under the First Agreement on 17.05.2018; whereas, the latter invoice relates to services rendered from 15.05.2018 to 31.05.2018 under

the Revised Agreement ('May Invoice'). Thereafter, the Applicant continued to provide its services for June 2018 on *bona fide* basis.

- d. On 11.06.2018, the Respondent was given a post-dated cheque ('PDC') '001845' of HDFC Bank dated 01.10.2018 of Rs. 1,86,70,458/- (Rupees One Crore Eighty-Six Lakh Seventy Thousand Four Hundred and Fifty-Eight Only) for services rendered/ to be rendered for the month of June 2018 ('June Invoice'). There was an understanding between the parties that if the Respondent fails to pay the due amount for June 2018, the Applicant can use the aforementioned cheque for the said purposes.
- e. The April Invoice was cleared on 01.07.2018; given the inordinate delay in clearing the dues of the Applicant under the First Agreement, the Applicant suspended its services under the Revised Agreement. A Letter dated 05.10.2018 was issued by the Respondent assuring that the payment for the May Invoice would be made without any further delay and issued a PDC as a security towards the May Invoice. Subsequently, the Applicant received following against part payment of May Invoice:

Serial Number	Date	Amount (in INR)
1.	09.10.2018	Rs. 41,84,253/-
2.	10.10.2018	Rs. 8,98,918/-
3.	12.10.2018	Rs. 28,94,297/-
Total Amount		Rs. 79,77,468/-

- f. Meanwhile, on 11.08.2018, the Respondent requested the Applicant to grant further extension till 01.10.2018 and promised to pay off the outstanding amount as mentioned in the invoice of June 2018, but it failed to keep its promise and defaulted. Consequently, the Applicant deposited the cheque dated 01.10.2018, which was dishonoured and returned on 31.10.2018 with remark 'Payment Stopped by Drawer.' Copy of the dishonoured cheque with return memo is annexed as Annexure – 4 of the Application.
- g. Thus, the Applicant sent a legal notice dated 02.11.2018 to the Respondent, the reply of which was received on 19.11.2018. Copy of the Legal Notice and Reply is annexed as Annexure – 5 of the Application. Applicant issued a demand notice dated 17.07.2019, demanding Rs. 1,88,27,922/- (Rupees One Crore Eighty-Eight Lakh Twenty-Seven Thousand Nine Hundred and Twenty-Two Only) inclusive of interest @18% per annum of Rs. 33,78,422/- (Rupees Thirty-Three Lakh Seventy-Eight Thousand Four Hundred and Twenty-Two Only) and TDS of Rs. 3,21,904/- (Rupees Three Lakh Twenty-One Thousand Nine Hundred and Four Only). Copy of the Demand Notice dated 17.07.2019 and the postal receipts dated 19.07.2019 sent to the Respondent is annexed as Annexure – 6 of the Application.
- h. The aforementioned details as reflected in Part IV of the Application are as follows:

PARTICULARS OF OPERATIONAL DEBT

1.	Total Amount of Debt, Details of Transactions on account of which debt fell due, and the Date from which such debt fell due.	Total amount of debt: Rs. 1,88,27,922/- (Rupees One Crore Eighty-Eight Lakhs Twenty-Seven Thousand Nine Hundred and Twenty-Two Only)
2.	Amount claimed to be in default and the date on which the default occurred	Amount Claimed to be in default: Rs. 2,25,28,248/- [#] Total Principal Amount: Rs.1,39,00,000/- Total Interest Due: Rs.1,34,51,364/-* TDS: Rs. 3,21,904/- Date from which Debt fell Due: 11.08.2018

* Calculated the Interest Amount @18% p.a. from the period of 11.08.2018 to 10.09.2019.
Computation of Amount to be claimed from Corporate Debtor is annexed at Annexure – 3 of the Application.

5. Notices were issued in the aforesaid Application, and the Respondent filed a Reply vide Diary No.2729/2019 dated 22.11.2019 stating that: -

- a. The Applicant has not approached the Tribunal with clean hands and concealed material information in order to place itself as Operational Creditor as it has submitted incomplete and selective Ledger Account entries for its own benefit. Thus, the inadequate filing of the Application in the prescribed manner and non-disclosure of a pre-existing dispute between the parties by the Operational Creditor deserves to be dismissed.
- b. Respondent has further raised grounds for non-maintainability based on improper authorisation. The demand notice sent by the Operational

Creditor in Form 3 does not have any authorisation in favour of the signatory of the demand notice. Correspondingly, Mr. Gautam Vohra, Director of the Applicant, is not authorised to file the present Application as the Board Resolution dated 24.04.2018 does not confer the power to sub-delegate the representation of the Operational Creditor on Mr. Ch. Murali Krishna (*authorised signatory for administrative purposes*).

- c. As per the Agreement between the parties, the scope of work for Applicant was only to act as an intermediary for disbursing payments on behalf of the Respondent to various online portals for delivery purposes, which is not an act of providing goods or services. Furthermore, the Operational Creditor has sent two demand notices, and the same was concealed purposely with *malafide* intentions. The first incomplete Form 3 dated 04.01.2019 ('First Demand Notice') discloses date on which debt fell due as 11.06.2018 whereas the demand notice dated 17.07.2019 ('Second Demand Notice') discloses default date as 11.08.2018. Copy of First Demand Notice is annexed as Annexure – R2 of the Reply. Therefore, the Second Demand Notice not only reflect the miscalculation of the alleged debt but also shows existence of prior dispute.
- d. Furthermore, the Applicant has failed to annex any certificate or document or statement of account or ledger under Section 9 (3) (c) of the Code wherein the financial institution(s) will certify that no payment of the operational debt has been made by the Corporate Debtor. Such

documentation is a mandatory requirement under IBC. Hence, unless and until an operational debt is owed under Section 5 (21) read with Section 5 (20) of the Code; the strict interpretation of the Code debars the Application of the Operational Creditor under Section 9 of the IBC.

- e. The Ledger Account filed by the Respondent shows there are no dues pending or outstanding to the Applicant. A perusal of the same indicates that Corporate Debtor has made a Purchase Return Note ('Debit Notes') entry in the Ledger, the same is reproduced for ease of reference:

Serial No.	Date	Amount (INR)	Remark
1.	07.04.2018	33,98,401	Being debit for Services not provided till FY 18
2.	10.06.2018	5,64,813	Being debit for Services not provided April Invoice 2018
3.	01.07.2018	46,96,415	Being bill booked dated 07.06.2018 returned for the purpose of GST
4.	11.07.2018	48,69,844	Being debit for Services not provided May Invoice 2018
5.	26.08.2018	22,57,117	Being bill booked dated 07.06.2018 returned for the purpose of GST
6.	12.09.2018	52,93,769	Being debit for Services not provided June Invoice 2018

This fact has been conveniently concealed by the Applicant from this Adjudicating Authority to further their mischievous cause and waste the invaluable time and resources of the Tribunal. Copy of Ledger Account

of Applicant maintained by the Respondent in the course of its business is annexed in Annexure – R1 of the Reply.

f. For the reasons mentioned above, while submitting the Reply, the Respondent relied upon these cases:

i. *Mobilox Innovations Private Limited v. Kirusa Software Pvt. Ltd., 2018 1 SCC 353.*

The Hon'ble Supreme Court held that regarding pre-existence of dispute, the IBC defines 'dispute' as:

Section 5(6) – “dispute” includes a suit or arbitration proceedings relating to-

a. The existence of the amount of Debt;

b. The quality of goods and services; or

c. The breach of a representation or warranty;

ii. *Jindal Steel & Power Ltd. DCM International Ltd., 2017 SCC Online NCLT 989.*

In this case, the tenant sought to recover the security deposit on account of the termination of the lease agreement with the landlord. The default should arise in relation to the amount payable towards supply of goods or rendering services, etc. It was held that tenants do not come within the meaning of 'operational creditor' as defined under Section 5(20) and (21) of the Code. The Hon'ble NCLAT uphold the aforementioned judgment of the NCLT Delhi.

iii. *Col. Vinod Awasthy v. AMR Infrastructure Limited, C.P. No. (IB) – 10(PB)/2017.*

The Hon'ble NCLT, New Delhi Bench, observed that '*... The framers of the Code had not proposed to include within the expression of an 'Operational debt', a debt other than a financial*

debt. Therefore, an operational debt would be related only to four categories as specified in Section 5(21) of the Code like goods, services, employment and government dues.’

This view is further followed in *Mukesh Kumar v. AMR Infrastructure Limited, C.P. No. (IB) – 30(PB) / 2017* and *Pawan Dubey & Anr. v. J.B.K. Developers Private Limited, C.P. No. (IB) – 19(PB) / 2017*.

6. The Applicant filed its rejoinder *vide* Diary No. 210/2020 dated 29.01.2020, submitting the following:

- a. Mr. Ch. Murali Krishna was appointed through Board Resolution dated 24.04.2018 as authorised signatory and the said Board Resolution further authorised on him to issue specific authorisation. Further, the Second Demand Notice was duly received by the Corporate Debtor. The debt after being due and payable, no intimation of dispute or payment of debt has been done. The demand notice was signed by Senior Legal Manager in the Applicant Company. The Authorisation Letter dated 30.10.2018, authorised the Senior Legal Manager to issue the demand notice on behalf of the Applicant. A Copy of the aforesaid Authorisation Letter dated 30.10.2018 is annexed as Annexure – 1 of the Rejoinder.
- b. The First Demand Notice contains the same principal amount as outstanding as it contains in Second Demand Notice. The need for issuing another demand notice arose because of inadvertent typographical error in the First Demand Notice regarding the date on which the debt fell due.

The date in First Demand Notice 11.06.2018 was wrongly inputted instead of correct date, *i.e.*, 11.08.2018.

- c. The Corporate Debtor has failed to submit any cogent evidence to substantiate any failure in complying with the conditions and obligations as mentioned under Master Service Agreement on the part of the Operational Creditor. There is an outstanding debt due and the same is apparent through the ledger account of the Corporate Debtor. Copy of the ledger account of the Corporate Debtor in the books of Applicant showing the actual transactions are annexed as Annexure – 2 of the Rejoinder.
- d. The compliances under Section 9 (3)(c) of the IBC are directory in nature and subject to availability. Nevertheless, the Applicant wrote a letter to the concerned bank in order to get the certificate. In place of issuing a certificate, Applicant's bank has certified the payment details of the Corporate Debtor. Copy of the Letter certified by the bank is annexed as Annexure – 3 of the Rejoinder.
- e. Further, the Applicant relies on *Mobilox Innovations (P) Ltd. v. Kirusa Software (P) Ltd.*, wherein it was held that '*dispute if any, prior to the issuance of the Demand Notice, must be brought to the notice within 10 days under Section 8(2) of IBC.*' The Respondent never communicated to the Demand Notice either by email, phone call or in-person for their grievance concerning the dues.

7. The Respondent through an additional affidavit has placed certain email correspondence on record *vide* Diary No. 2842/2021 dated 23.12.2021. It is stated that:

- a. as per email dated 25.06.2018, the Respondent raised issues with the Operational Creditor as to payment of Provident Fund ('PF') and Employee's State Insurance ('ESI') as per terms of the agreement dated 20.11.2018. Copy of the email dated 25.06.2018 is annexed as Annexure – A. Further, email dated 30.05.2018 also confirms that the Respondent called upon the Operational Creditor to carry out his contractual duties against the invoices raised. Copy of the email dated 30.05.2018 is annexed as Annexure – B.
- b. the emails dated 12.10.2019, 15.10.2019, 19.10.2019, 30.10.2019 and 13.11.2019 highlight the true nature of the dispute. The cheques were given as security for outstanding amount between the parties. The aforesaid communication makes it clear that those cheques were meant not to present rather return once the outstanding dues of the Operational Creditor is cleared. Furthermore, the amount claimed in the present application is inaccurate, which was duly informed as the recommendation of the Respondent's Auditor. Copy of emails dated 12.10.2019, 15.10.2019, 19.10.2019, 30.10.2019 and 13.11.2019 are annexed as Annexure – C of the Additional Affidavit.

8. The Applicant filed their written submission *vide* Diary No. 2866/2022 dated 28.09.2022 wherein it relied on the following judgments:

a. Shapoorji Pallonji and Company Private Limited v. Shore Dwellings Pvt. Ltd., Company Appeal (AT) (CH) (INS) No. 08 of 2021.

The Hon'ble NCLAT has observed that in this particular case that '*the Respondent had admitted the debt on various occasions and no dispute raised prior to issuance of demand notice, the application of the Appellant is complete and fulfilled of the criteria as enumerated under Section 9 of the IBC.*' Accordingly, it initiated the CIRP of the Corporate Debtor.

b. Manjeet Kaur Sran v. Tricolite Electrical Industries Ltd., Company Appeal (AT)(Insolvency) No. 894 of 2019.

The Hon'ble NCLAT has relied on the judgment of Hon'ble Supreme Court of India in '*Innoventive Industries Ltd. v. ICICI Bank (2018) 1 SCC 407*'. The Apex Court observed that:

'27. The scheme of the Code is to ensure that when a default takes place, in the sense that a debt becomes due and is not paid, the insolvency resolution process begins. Default is defined in Section 3(12) in very wide terms as meaning non-payment of a debt once it becomes due and payable, which includes non-payment of even part thereof or an instalment amount. For the meaning of 'debt,' we have to go to Section 3(11), which in turn tells us that a debt means a liability of obligation in respect of

a 'claim' and for the meaning of 'claim', we have to go back to Section 3(6) which defines 'claim' to mean a right to payment even if it is disputed.'

- c. The Hon'ble NCLAT both in *Apya Capital Services Pvt. Ltd. v. Guardian Homes Pvt. Ltd., Company Appeal (AT)(Insolvency) No. 412 of 2020* and *Manipal Media Network Limited v. Vishwakshara Pvt. Ltd., Company Appeal (AT)(Insolvency) No. 369 of 2020* has emphasised that the Demand Notice under Section 8 of the Code is to afford the Corporate Debtor an opportunity to clarify his position regarding payment of debt that the Operational Creditor is claiming to be due. At the time of hearing, the Corporate Debtor raising the issue of existence of a dispute appears to be a spurious dispute, raised to ward off the responsibility of repayment of debt as claimed by the Operational Creditor.
9. We have heard the Learned Counsels for the parties and perused the averments made in the Application, Reply, Rejoinder and the Documents enclosed with the Application.
10. This Adjudicating Authority has perused all the relevant papers and found them in order. The Registered Office of the Respondent is situated in Jaipur; therefore, this Adjudicating Authority has jurisdiction to entertain and try this Application. Further, this matter is within the purview of Laws of Limitation, as the cause of action arose in 2018, and the Application was filed before this Adjudicating Authority in 2019. Hence, the period of three years after the

Default occurred had not been exhausted at the time of filing this Application. Therefore, the present Application has been filed within the prescribed period of limitation.

11. It is abundantly clear from the documents produced before us that the Respondent has defaulted in making full payments against the services rendered by the Operational Creditor.
12. In the instant case, the Operational Creditor has annexed invoices raised for the services rendered from Page No. 47 – 63 of the Application. The aforementioned invoices have been duly acknowledged and accepted by the Corporate Debtor through its Ledger Account annexed in the Reply. Further, there are various entries of Debit Notes in the Ledger Account of the Operational Creditor maintained by the Corporate Debtor. However, it is seen that none of such debit notes are brought on record. It is made clear that the Corporate Debtor has not made full payment against the invoices raised by the Operational Creditor.
13. In addition, the Respondent on multiple occasions has acknowledged its liability towards the Applicant. Firstly, the email dated 27.06.2018 and 13.08.2018 wherein the Respondent asked for the details so that '*correct amount could be released*' and stated that '*client payment is due to hit the account today ... your payment will be done on priority,*' respectively. Secondly, Cheque No. 001845 dated 01.10.2018 was given to the Applicant as Security against repayment of unpaid invoices for services rendered in June

Invoice is admitted. Thirdly, through Letter dated 05.10.2018, being reproduced for ease of reference read as follows:

30A

D

Dropbase Software Private Limited

Dated: 05/10/2018
Place: Hyderabad

To:
Karvy Forde Search Private Limited
Karvy Millenium, Plot No.31/P, Nanakramguda,
Gachibowli, Hyderabad TG 500032 IN
CIN: U74140TG2001PTC036741

We, the directors of M/s Dropbase Software Private Limited ("Debtor Company"), hereby acknowledge that pursuant to Annexure A of the Master Services Agreement dated May 15, 2018 (MSA) entered between the Debtor Company and Karvy Forde Search Private Limited, the Debtor Company owes to Karvy Forde Search Private Limited, payment of INR 83, 77, 449/- (Indian Rupees Eighty-Three Lakhs and Seventy-Seven and Four Hundred and Forty-Nine only) per the invoice of May, 2018.


I, Mr Himanshu Meena, CEO & Director of the Debtor Company being authorized with/by consent of all the directors of the Debtor Company hereby accept the outstanding debt of INR 83,77, 449/- (Indian Rupees Eighty-Three Lakhs and Seventy-Seven and Four Hundred and Forty-Nine only) including 9% commission fee and 18% interest on delayed payment to Karvy Forde Search Private Limited and undertake to pay the outstanding amount of INR 83,77, 449/- (Indian Rupees Eighty-Three Lakhs and Seventy-Seven and Four Hundred and Forty-Nine only) and provide a guarantee via issue of post-dated cheques which shall be returned by Karvy Forde Search Private Limited to the Debtor Company upon payment of outstanding amount per the Annexure I. Additionally, the Debtor Company and its Directors shall indemnify Karvy Forde Search Private Limited for any amount outstanding or any loss or expenses of any kind which are borne for the recovery of the outstanding amount in full. Consequently, upon failure of this undertaking by the Debtor Company, the Debtor Company gives right to Karvy Forde Search Private Limited to initiate legal proceedings including criminal charges, against the Debtor Company and its Directors – jointly or severally, in the jurisdiction of Hyderabad.

I, Mr. Mr Himanshu Meena, sign this document, on the date written below, on behalf of the Debtor Company and all of the directors of the Debtor Company.

Mr Himanshu Meena
CEO and Director
M/s. Drop base Software Private Limited
4th FLOOR, D.J. HOUSE, NEAR WILSON HOUSE,
NAGARDAS ROAD, OPP. ANDHERI SUBWAY
ANDHERI (EAST) MUMBAI – 400069

Himanshu Meena
05.10.2018

2/12, Malviya Nagar,
Jaipur – 302017
Rajasthan, India
www.parsel.in
info@parsel.in



Lastly, in email dated 13.10.2018 and 15.10.2018, it requested the Applicant to hold/ return the cheques as the payments are being made regularly.

14. The Corporate Debtor ambiguously states in its reply that the Operational Creditor has defaulted in completing the given work order. However, neither any alleged work order has been annexed nor there is any specific pleading as to which condition of the supposed work orders, or the Master Service Agreements has been breached by the Applicant.
15. There can be no pre-existence of a dispute, merely on the grounds of enquiry under Section 5(6) of the Code. The Respondent *vide* email dated 24.05.2018 enquired about insurance details and ESIC card of one Ms. Meera Mehboob Patel, and the same was duly sent by the Applicant *vide* email dated 28.05.2018. The contention of the Respondent that the cheques were given for the purpose of security and not being returned; further confirms the liability of the Corporate Debtor. The differences in the amount due and payable based on auditing differences or the quantum of debt or differential calculation is also not tenable in eyes of law. It is not for the Adjudicating Authority to do a roving enquiry to ascertain the exact amount of unpaid debt and makes it a ground for dismissing the application. It is enough if under Section 4 of the IBC the unpaid debt is more than the threshold value of Rs. One Lakh for acceptance of Application under Section 9 of IBC.
16. It is evident from the above that the Corporate Debtor has defaulted in payment of the Debt to the Operational Creditor. Further, it has raised the contention of

the dispute that flouts the principle of law, which states that if there is a pre-existing dispute between the parties, an Application filed under Section 9 is not maintainable.

17. The first issue for consideration is whether the Demand Notice in Form-3 dated 17.07.2019 was served upon the Respondent. The Demand Notice was sent via a registered post on 19.07.2019 to the Respondent and its Directors. The postal receipt is attached on Page No. 42 of the Application.

18. The next issue for consideration is whether the Respondent disputed the operational Debt. The Respondent / Corporate Debtor has filed a Reply and argued that they had been dissatisfied with the services provided by the Operational Creditor. However, they have not submitted any authentic communication to substantiate the same. Thus, as per the documents placed on record with the Adjudicating Authority, there is no dispute as to the outstanding liability of the Corporate Debtor towards the Operational Creditor.

19. In *Mobilox Innovations Private Limited Vs Kirusa Software Private Limited*, para 34, the Hon'ble Supreme Court laid down what the Adjudicating Authority has to examine in an Application under Section 9. Para 34 is as follows: -

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

- (i) Whether there is an “operational debt” as defined exceeding Rs 1 lakh? (See Section 4 of the Act)*
- (ii) Whether the documentary evidence furnished with the Application shows that the aforesaid Debt is due and payable and has not yet been paid? and*

(iii) *Whether there is existence of a dispute between the parties or the record of the 15 Company Appeal (AT) (Insolvency) No. 256 of 2021 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.”

However, the defence must be plausible, and while not examining it on merits, it must not appear as a moonshine defence. Therefore, in the present matter at hand, there is a clear debt, repayment of which has been defaulted by the Corporate Debtor, and there appears to be no pre-existing dispute between the parties. Any allusion to such a dispute seems to be confirmed.

17. We have gone through the contents of the Application filed in Form No.5 and found the same to be complete. As discussed above, there is a total unpaid operational debt (in Default) of Rs. 2,25,28,248/- (Rupees Two Crore Twenty-Five Lakh Twenty-Eight Thousand Two Hundred and Forty-Eight Only), including the interest @18% per annum and TDS. It is observed that the Operational Creditor has issued various invoices (Page No. 47 – 64 of the Application) for services supplied to the Respondent Corporate Debtor. Applicant Operational Creditor has given Demand Notice in Form No. 3 dated 17.07.2019, duly served on the Respondent Corporate Debtor. This Adjudicating Authority has held above that the Operational Creditor correctly

delivered the Demand Notice in Form No. 3, and no pre-existing dispute is proved.

18. It has been shown that the Corporate Debtor has failed to make payment of the aforesaid amount due as mentioned in the statutory notice to date. It is also observed that the conditions under Section 9 of the IBC stand satisfied. Hence, this Adjudicating Authority is inclined to commence CIRP against the Corporate Debtor as envisaged under the provisions of IBC.
19. Under sub-section (4) of Section 9 of the Code, the Operational Creditor may propose the name of a Resolution Professional to be appointed as Interim Resolution Professional ('IRP'), but it is not obliged to do so. In the instant case, the Operational Creditor has not proposed the name of any person to be appointed as IRP. Hence, this bench will appoint the RP from the pool of RPs empanelled with the IBBI. Therefore, the bench is appointing Mr. Rajneesh Sharma, bearing Registration No. IBBI/IPA-002/IP-N01013/2020-21/13249 with the e-mail address rajneeshsharmacs@gmail.com and phone number +91-9986174563 as the RP in the present matter. The said RP is directed to file the written consent to act as resolution professional in Form-A provided under Regulation 4(2) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Personal Guarantors to Corporate Debtors) Regulations, 2019.
20. In this matter, the Resolution Professional appointed herein, Mr. Rajneesh Sharma, shall exercise all the powers enumerated under the Code read with

Rules made thereunder. The Applicant shall provide a copy of the Application, if not provided already, along with this order to IBBI for its records.

21. The IRP is directed to take all such steps as are required under the statute, inter-alia in terms of Sections 15, 17, 18, 19, 20, and 21 of the Code and transact proceedings with utmost dedication, honesty and strictly under the provisions of the Code, and Rules and Regulations thereunder.
22. Consequences of commencement of CIRP shall be inter-alia as follows:
 - i. The IRP appointed by the Adjudicating Authority, Mr. Rajneesh Sharma, is directed to take over the affairs of the Corporate Debtor and duties as required to be performed by him under the provisions of Code including the issue of a publication in widely circulated Newspapers as contemplated under the provisions of the Code and calling for claims from the creditors of the Corporate Debtor; and collation of the same shall be done.
 - ii. Further, as a sequel of admission, moratorium, as envisaged under Section 14 of the Code, is invoked concerning the Corporate Debtor, which will be in vogue during the CIRP of the Corporate Debtor. The IRP shall carry out CIRP strictly as per the timelines specified and as envisaged under the provisions of the Code concerning the Corporate Debtor.
 - iii. The said IRP shall act strictly following the provisions of the Code, and to defray his expenses to be incurred and fees on the account, the Applicant is directed to deposit a sum of Rs. 2,00,000/- (Two Lakhs Only) to the account of IRP within three days from the date of this order. The IRP shall

duly file a status report apprising this Adjudicating Authority about the progress of CIRP as unfolding concerning the Corporate Debtor. In terms of Section 17 and 19 of the Code, all personnel of the Corporate Debtor including promoters and Board of Directors, whose powers shall stand suspended, shall extend all cooperation to the IRP during his tenure as such and the management of the affairs of the Corporate Debtor shall vest with the IRP.

iv. In terms of Section 9 of the Code, this order shall be communicated at the earliest, not exceeding one week from today, to the Applicant, Corporate Debtor, as well as the IRP appointed by this Adjudicating Authority to carry out CIRP. A copy of this order shall also be communicated to IBBI for its records.

23. Copy of this order to be supplied to the Applicant. The Applicant and his counsel are directed to serve a copy of this order along with a copy of the Application and documents on the Resolution Professional by all modes for information.

24. The Registry is directed immediately to send a soft copy of the instant Application along with this order to the RP nominated herein on his e-mail id.

25. Accordingly, CP No. (IB)- 253/9/JPR/2019 is admitted.

IA No. 428/JPR/2022

The Corporate Debtor filed this IA under Section 60(5) of the Code read with Rule 11 and 32 of the NCLT Rules, 2016, seeking to place on record the additional affidavit along with documents.

In light of the foregoing, this Interim Application is infructuous and is disposed of accordingly.

DEEP
CHANDRA
JOSHI

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DEEP CHANDRA
JOSHI
Date: 2022.10.20
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**DEEP CHANDRA JOSHI
(JUDICIAL MEMBER)**

PRASANT
A KUMAR
MOHANTY

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**PRASANTA KUMAR MOHANTY
(TECHNICAL MEMBER)**