



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

**CP (IB) No.06/ALD/2022**

**An application under Section 9 of the Insolvency & Bankruptcy Code, 2016 read with Rule 6 of Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016**

**IN THE MATTER OF:**

**Kellton Tech Solutions Limited,**

Plot No.1367, Phagan Plaza, Road No. 45,  
Jubilee Hills, Hyderabad - 500033, India.

Also, at:

404-405 iLabs Centre,  
Udyog Vihar, Phase-III,  
Gurugram, Haryana -122016

**...Applicant/Operational Creditor**

**Versus**

**Actas Technologies Private Limited**

Registered office at: C-16, Sector-6,  
Noida, Uttar Pradesh, 201301.

Also, at:

A-38, Jalvayu Vihar, Sector-21,  
Gautam Buddh Nagar,  
Uttar Pradesh - 201301

**...Respondent/Corporate Debtor**

**Order pronounced on 04.09.2023**

**CORAM:**

Sh. Praveen Gupta : Member (Judicial)

Sh. Ashish Verma : Member (Technical)

**PRESENT-**

Sh. Rakesh Kumar with Ms. Tanisha Kaushal, Advs.  
: *For the Operational Creditor*

Sh. Rahul Chaudhary, Adv. : *For the Corporate Debtor*



## ORDER

1. The instant application is filed on 21.01.2022 by **Kellton Tech Solutions Ltd.** (hereinafter referred as '**Applicant**'/'**Operational Creditor**') under Section 9 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred as the "**I & B Code, 2016**") read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 (hereinafter referred as "**the Rules**"). The prayer made therein is to initiate Corporate Insolvency Resolution Process (hereinafter referred as '**CIRP**') in respect of **Actas Technologies Pvt. Ltd.** (hereinafter referred as '**Respondent**'/'**Corporate Debtor**') due to default in payment of total outstanding amount of Rs.1,82,36,619/- (Rupees One Crore Eighty Two Lakhs Thirty Six Thousand Six Hundred and Nineteen only) comprising of Principal Amount of Rs. 1,75,82,000/- (One Crore , Seventy Five Lakh and Eighty Thousand only ) plus interest calculated at the rate of 12% per annum, calculated for the period the date the payment became due and demand notice is issued.
2. Briefly stated facts of the present case as averred by the Applicant/Operational Creditor in its application filed in Form-



5 containing part I, II, III, IV & V are that:-

- i.** The Operational Creditor is a CMMi Level-5, Public Listed IT company. It offers IT services including development of software, technology consulting, outsourced product development on a global scale. The Corporate Debtor, known as M/s Actas Technologies Pvt. Ltd., sought to engage the Operational Creditor's services to establish an electronic wallet (e-wallet) business in Saudi Arabia. To formalize this collaboration, both parties entered into a "Software Development and Services Agreement" dated 17.09.2020. The purpose of this agreement was to outline the terms and conditions for the development of a customized e-wallet platform. The agreed-upon cost for these services amounted to Rs.2,00,00,000 (Rupees Two Crore) plus applicable GST in terms of Schedule III of the agreement . This payment was scheduled to be made in various stages, as specified in Schedule III of the agreement.
- ii.** In accordance with the agreement, the Operational Creditor undertook the task of creating the e-wallet



platform for the Corporate Debtor, dividing the process into three distinct phases, further divided into a total sixteen milestones. The Operational Creditor was responsible for invoicing the Corporate Debtor upon successful completion of each of these milestones, as detailed in Schedule III. Progressing as per the plan, the Operational Creditor successfully developed the e-wallet platform for the Corporate Debtor up to the 14th milestone, which involved User Acceptance Testing (UAT). This progress led to the issuance of five invoices. While the Corporate Debtor made timely payments for the first three invoices, they failed to fulfill their payment obligations for the remaining two invoices, which are described in further detail below.

<b>S. No.</b>	<b>Particulars</b>	<b>Amount (in Rs.)</b>	<b>Status of payment</b>
<b>i.</b>	<b>Paymonk/20-21/01</b>	<b>23,60,000</b>	<b>Paid on 06.10.2020</b>
<b>ii.</b>	<b>Paymonk/20-21/02</b>	<b>8,26,000</b>	<b>Paid on 05.11.2020</b>
<b>iii.</b>	<b>Paymonk/20-21/03</b>	<b>15,93,000</b>	<b>Paid on 05.11.2020</b>
<b>iv.</b>	<b>Paymonk/20-21/04</b>	<b>29,50,000/-</b>	<b>Unpaid</b>
<b>v.</b>	<b>G/1/2021-22/0232</b>	<b>1,46,32,000/-</b>	<b>Unpaid</b>
<b>Total Invoice Amount</b>		<b>R. 2,23,61,000/-</b>	
<b>Total amount unpaid, operational debt</b>		<b>Rs. 1,75,82,000/-</b>	



- iii.** As per the Operational Creditor, The Corporate Debtor has neglected to settle the payment associated with Invoice No. Paymonk/20-21/04, amounting to Rs.29,50,000 (Rupees Twenty Nine Lacs Fifty Thousand), and Invoice No. G/I/2021-22/0232, totaling Rs.1,46,32,000 (Rupees One Crore Forty Six Lacs Thirty Two Thousand). Therefore, an amount of Rs. 1,75,82,000 (Rupees One Crore Seventy-Five Lacs Eighty-Two Thousand) is still pending and payable by the Corporate Debtor to the Operational Creditor along with a 12% annual interest, calculated from the due date of the amount.
- iv.** It is stated in the application that the Operational Creditor attempted to recover the outstanding sum by sending multiple requests and reminders, including a total of 37 emails, to the Respondent/Corporate Debtor. However, the Corporate Debtor failed to make any payment, leaving the outstanding amount of Rs. 1,75,82,000/- still unpaid.
- v.** After having failed to recover the outstanding amount from the Corporate Debtor, the Operational Creditor



issued a Demand Notice u/s 8 of the I & B Code, dated 08.10.2021 demanding the payment by the Corporate Debtor of the operational debt, amounting to Rs.1,75,82,000 (Rupees One Crore Seventy Five Lacs Eighty Two Thousand), along with an interest of 12% per annum, resulting in a total of Rs.1,82,36,619 (Rupees One Crore Eighty Two Lacs Thirty Six Thousand Six Hundred and Nineteen). This Demand Notice was served to the Corporate Debtor vide post as well as through electronic modes.

**vi.** In response, the Corporate Debtor acknowledged the receipt of the Demand Notice under Section 8 of the I& B Code, 2016 by replying to the Demand notice but in the opinion of the Operational Creditor , the Corporate Debtor in his reply, has raised frivolous issues with an intention to avoid making the payment of the amount due to the Operational Creditor.

**3.** The Respondent/Corporate Debtor has submitted its reply stating that the present Insolvency and Bankruptcy petition has been filed by M/s Kellton Tech Solutions Pvt. Ltd, falsely representing itself as an Operational Creditor of the



Respondent in question. This petition is an abuse of the legal process and is not maintainable. The following contentions have been raised in the reply of the Respondent pleading for the dismissal of this petition:

- i.** It is stated in the reply that the Applicant and Respondent entered into an agreement for development of e-wallet platform and the end services were to be performed for a client i.e. THIMR AL ARABIYA who is End Client of the Corporate Debtor for the said product. The agreement was for a total consideration of Rs. 2,00,00,000/- (Rupees Two Crores) plus GST, as outlined in Schedule III of the Agreement. It was further stated that payment of consideration under the agreement was required to be made on a milestone basis i.e. separately for each milestone only after achievement of the particular milestone along with relevant supporting documents and reports evidencing completion of relevant milestones as prescribed in the agreement .
  
- ii.** Clause 3.2 of the Agreement also stipulated that any invoice submitted by Applicant shall be considered valid only after it is duly confirmed by the Respondent based on



three criteria: (a) the performance of services, (b) the completion of the relevant milestone, and (c) the amount specified in the invoice. The relevant excerpts from Clause 3.2 of the Agreement are as follows:

*“...The Service Provider shall, upon completion of each Development Fee milestone and subject to compliance with its obligations under this Agreement, raise an invoice for the particular Development Fee instalment and provide PAYMONK with relevant supporting documents and reports evidencing completion of the relevant milestones...”*

- iii.** In accordance with the agreement detailed in Clause 3.2 as mentioned above, the Applicant adhered to the practice of seeking the endorsement of the Acceptance Form from both the 'Corporate Debtor' and the End Client up to Milestone 4. This process was consistently followed and executed till the successful achievement of Milestone 4, as specified in Schedule III of the Agreement. After completion of the Milestone 4, as stated by the Respondent/Corporate Debtor, the Applicant/Operational Creditor has failed to complete any of the milestones nor have, they completed or delivered any part of the project under the Agreement either



to the satisfaction of the 'Corporate Debtor' or the End Client of the Corporate Debtor.'

- iv.** The Applicant could not achieve all the milestones under Phase 1, Phase 2 and Phase 3 and no deliveries have been made to this day and the Applicant has not provided any evidence of completing or delivering the requested services or work in their application.
- v.** Due to the work performed by the Operational Creditor being of unsatisfactory quality and not being delivered as expected, only a partial payment of Rs. 55,46,000/- out of the total amount of Rs. 2,00,00,000/- has been made up to now. Therefore, an amount of Rs. 1,44,54,000/- remains outstanding and unpaid. The Applicant, nevertheless, persisted in sending reminder emails demanding payment for claims. This continuous correspondence seemed to be aimed at preventing M/s ACTAS Technologies from initiating any indemnity claims.
- vi.** The Corporate Debtor in its reply pointed out that the Applicant is fully aware of their indemnity obligations according to the Agreement. This current legal proceeding has been initiated as a precautionary measure to avoid the



Applicant's responsibility for providing sub-standard work and undelivered work. As per the Corporate Debtor, the Applicant has not presented any proof in their application showing the completion of the work to the satisfaction of the Corporate Debtor and its End Client. The Applicant's indemnity obligations are outlined in Clause 12 of the Agreement. The respondent has initiated indemnity proceedings which are going on at the Delhi High Court Mediation Centre under Section 12A of the Commercial Courts Act, 2015. A copy of the Indemnity Notice issued by the Corporate Debtor to the Applicant/Operational Creditor is attached herewith and labeled as ANNEXURE —III of this reply.

- vii.** Discussing these facts and circumstances of the cases showing the dispute between the Applicant/Operational Creditor and Respondent/Corporate Debtor in respect of quality of the software product supplied to them by the Operational Creditor, the Corporate Debtor has provided the details of various emails exchanged between them and the Operational Creditor since 20.01.2021 in respect of the invoices issued by the Operational Creditor being not as per



the agreement and also raising the issue of non-completion of works and the quality of the ongoing works by the Applicant/ Operational Creditor was never resolved and there was a “**pre-existing dispute**” between the parties. The extract of these emails have been discussed in the reply along with a summary of such emails are also given in a tabular form in the reply, and the same is reproduced as under:-

<b>Date</b>	<b>Documents</b>	<b>Remarks</b>
<b>17.09.2020</b>	Execution of “Software Development Agreement”	
<b>24.09.2020</b>	Invoice Paymonk/20-21/01: Rs. 23,60,000/-	<b>PAID on 06.10.2020</b>
<b>28.09.2020</b>	Invoice Paymonk/20-21/02: Rs. 8.26,000/-	<b>PAID on 05.11.2020</b>
<b>29.09.2020</b>	Invoice Paymonk/20-21/03: Rs. 23,60,000/-	<b>PAID on 05.11.2020</b>
<b>11.12.2020</b>	Invoice Paymonk/20-21/04: Rs. 29,50,000/-	<b>Not Paid as Milestone not achieved by Applicant till date. Delivery of the products &amp; services have not been effected till this</b>
<b>20.01.2021</b>	<b>DISPUTE:</b> Raised by Technologies through dated 20" January 2021.	Also admitted by applicant in <b>Page No. 73</b> of application/ petition



<b>20.01.2021</b>	Email by Applicant to End Client seeking approval of the Acceptance form for Milestone 4 as per Schedule III of Agreement. Acceptance	In terms of the acceptance procedure of the relevant milestone, the Applicant raised a request to sign and issue the Acceptance form for completion of Milestone 4 as per Schedule III of Agreement, thus showing that there was a set procedure for completion of proving completion of a Milestone and raising invoice by the Applicant under the Agreement
<b>03.05.2021</b>	Email exchanged between parties agreeing that end client should not be represented by Applicant and all representations of work shall only be through the name of 'Corporate Debtor'.	<b>Parties in lieu of this had already agreed that Mr. Gaurav Kumar Srivastava of Applicant company will make all communications through a new email id "<a href="mailto:gaurav@paymonk.com">gaurav@paymonk.com</a>"</b>
<b>15.06.2021</b>	<b>DISPUTE:</b> Raised by CEO of End Client conveying his concern for delay in delivery of the project/software code.	<b>The end client</b> "THIMAR AL ARABIYA" raised a concern of delay in delivery of the project works. This concern and dispute was raised directly to the Applicant company by the End Client.
<b>21.06.2021</b>	<b>DISPUTE:</b> 'Code Review Report' again shared through WhatsApp by 'Corporate Debtor' to Mr. Gaurav Srivastava, an executive of Applicant company regarding poor quality of the sample software coding provided by Applicant company	
<b>04.07.2021</b>	<b>DISPUTE:</b> Raised by CEO of end client conveying disappointment upon 'code review report' shared by end client directly to "applicant"/'operational creditor'.	The end client "THIMAR AL ARABIYA" raised a concern of the quality of the sample software codes supplied by the Applicant Company. This concern and



		dispute was raised directly to the Applicant company by the End Client.
<b>05.07.2021</b>	<b>DISPUTE:</b> Again, raised by CEO of end client conveying disappointment upon 'Code Review Report' shared by end client directly to "applicant"/operational creditor.	The end client "THIMAR AL ARABIYA" again raised a concern of the quality of the sample software codes supplied by the Applicant Company. This concern and dispute was raised directly to the Applicant company by the End Client.
<b>21.07.2021</b>	Consolidated invoice for all other pending Milestones G/1/2021-22/0232: Rs.1,46,32,000/-	Not Paid as all other Milestones not achieved by Applicant till this date. Delivery of the products & services have not been effected till this date
<b>11.10.2021</b>	<b>'DEMAND NOTICE' U/S 8 OF I &amp; B CODE SENT BY THE APPLICANT</b>	The notice was sent even when there was a pre-existing dispute between the parties
<b>21.10.2021</b>	Reply to 'Demand Notice' sent by ACT AS TECHNOLOGIES	Reply to 'Demand Notice' was delivered to counsel for Applicant and sent to Applicant clearly showing the existence of dispute before receipt of 'Demand Notice'.
<b>29.10.2021</b>	Notice Seeking Indemnity sent by ACT AS TECHNOLOGIES to the Applicant for failure to perform obligations as per Agreement.	The dispute is ongoing and ACT AS TECHNOLOGIES has initiated the process for filing a claim petition before the Delhi High Court Mediation Centre as per Section 12A of The Commercial Courts Act, 2015.

**viii.** In view of the above details and series of all the correspondences through emails having been taken place between the Operational Creditor and Corporate Debtor, it



has been stressed by the Corporate Debtor that there being a pre-existing dispute in respect of outstanding debt amount mentioned in the application filed U/s 9, the same is not admissible .

**ix.** The Corporate Debtor has further submitted that the Hon'ble Supreme Court has consistently ruled that in an Application under Section 9, the corporate debtor can raise any "pre-existing dispute" that existed before the issuance of the Demand Notice under Section 8, IBC, 2016. In the case of ***Mobilox Innovations Pvt. Ltd. Vs. Kirusa Software (P) Limited (2017 1 SCC Online SC 353)***, the Hon'ble Supreme Court emphasized that the 'existence of the dispute' and/or any ongoing legal proceedings must predate the receipt of the demand notice or invoice."

**x.** The Corporate Debtor further argued that despite the pre-existing dispute, the applicant issued a 'Demand Notice' under Section 8 of the I & B Code, 2016 to Respondent on 08.10.2021. The Respondent's assertion of pre-existing dispute is supported by the content of an email dated January 20, 2021 exchanged between the parties and thereafter , exchange of various emails between them as



discussed in previous para details of which is provided in a tabular form as above. These communications are acknowledged by the Applicant and is attached in **Annexure -5** of the application (pg. 65-75).

- xi.** The existence of the disputes between the parties was also highlighted by the 'Corporate Debtor' in its Reply to 'Demand Notice' u/s 8 sent by the Applicant.
  - xii.** The Ld. Counsel for Corporate Debtor relies on the judgement by the Hon'ble National Company Law Appellate Tribunal in, ***Umesh Saraf Suspended Director v. Tech India Engineers Private Limited [Company Appeal (AT) (Insolvency) No. 548 of 2020]*** wherein it is opined that the I&B Code, 2016 serves as a constructive law aimed at revitalizing the Corporate Debtor's standing and is not solely a mechanism for creditors to recover funds.
- 4.** No rejoinder has been filed by the Applicant against the above reply filed by the Operational Creditor. The Ld. Counsels of the parties finally put up their arguments in the hearing held on 08.08.2023. We have considered the facts of the cases as per the pleadings made in application, reply and written submissions filed by the parties and perused the records and



also considered the arguments put forward by the Ld. Counsels of both parties in the hearing.

5. On perusal of the record, we find that the applicant and respondent agreed to collaborate on the development of an e-wallet platform with the provision of end services for a client known as THIMR AL ARABIYA. The agreement involved a total consideration of Rs.2,00,00,000/- (Rupees Two Crores), plus GST, as detailed in Schedule III of the Agreement. The payment was structured based on specific milestones, and funds were to be released only upon successful completion of these defined milestones.
6. The Applicant managed to complete work up to a certain milestone after which it delivered work of unsatisfactory quality and failed to meet expectations. Invoices were also not raised on milestone basis meeting the requirements of the agreement between the parties. After raising four invoices upto 4<sup>th</sup> milestones, a final invoice of Rs. 1,46,32,000/- covering the works of remaining 12 milestones was raised without meeting the requirements of clause 3.2 of the agreement. Consequently, only three out of the five invoices raised by applicant were paid and an outstanding unpaid balance of



Rs.1,82,36,619/- including (interest @12% p.a. till 08.10.2021) remains to be paid as per the details provided in para 2(ii) of this order.

**7.** The issue in the case is concerning the amount of operational debt to be paid. On perusal of records, we have found that out of the two unpaid invoices, the first invoice amounting to Rs.29,50,000/- is dated on 11.12.2020 and is payable within 30 days, i.e. on 11.01.2020. This time period is barred under section 10A of the Code and thus, the petitioner at best can be entitled only for the last invoice dated 21.12.2021 which amounted to Rs.1,46,32,000/-.

**8.** The main issue for consideration is whether the operational debt was disputed by the Corporate Debtor. In the present case, the existence of pre-existing dispute is apparent from the correspondences having taken place between both the parties to this application as well as the end client via email. The first dispute arose on 20.01.2021 via email when the respondent replied to the Applicant's email by stating that no delivery had been made and yet the applicant was asking for payment. The said email communication has also been appended on page 73 of the application. The second dispute arose when the end



client, i.e. THIMAR AL ARABIYA raised concern regarding the delayed delivery of the project.

- 9.** The third dispute arose a week later via a WhatsApp chat when the corporate debtor raised a concern about the poor quality of the sample software coding provided by the applicant company.
- 10.** Lastly, the CEO of the End Client was disappointed with the code review report and conveyed the same to the Applicant directly via emails dated 4<sup>th</sup> and 5<sup>th</sup> July 2021. It is pertinent to note that despite receiving so many complaints from the Corporate Debtor as well as the End Client, the operational creditor did not make any efforts to resolve the dispute.
- 11.** Owing to no resolution from the Operational Creditor, the Respondent finally sent an indemnity notice dated 29.10.2021 to the applicant. As a result of the aforesaid notice, indemnity proceedings are going on at the Delhi High Court Mediation Centre under Section 12A of the Commercial Courts Act, 2015. The said notice is also attached to the reply.
- 12.** Thus, even after patent proof of pre-existing dispute raised via various e-mails sent by the Corporate Debtor as discussed



above, the Operational Creditor went ahead and sent the demand notice on 08.10.2021 and Corporate Debtor replied to it on 21.10.2021 and has discussed the pre-existing dispute between the two parties. This is in accordance with section 8(2)(a) of the Insolvency and Bankruptcy Code, 2016 (henceforth, Code) which states that the Corporate Debtor shall bring to the notice of the Operational Creditor the existence of a dispute within ten days of receipt of the demand notice for payment.

**13.** As regards to existence of pre-existing dispute, the Operational Creditor in its written submission has raised following points:

- a)** It is settled position of law that existence of dispute about operational debt must be prior to receipt of demand notice u/s 8 of the IBC, 2016.
- b)** It must be a real dispute and it should not be just for the sake of avoiding the liability of payment.
- c)** Mere sending of some email with general allegation does not amount to existence of a dispute. The dispute, if any, must be specific and real.



**14.** By taking the above points to be considered, it has been contended by the Operational Creditor that no specific dispute was raised by the Corporate Debtor prior to service of demand notice u/s 8 of the I & B Code, 2016. It is also contended that the nature of produce and services being provided to the Corporate Debtor are such that there is always scope of rectification/ modification to take care of operational issues, customization, compatibility as per the operational needs etc. and it is common practice in the industries, if there is any functional or developmental issues, bugs etc., the same has to be pointed out to the Developer, which the Developer has to rectify. As per the Operational Creditor, the Corporate Debtor has never pointed out any defect and any fact that any issue has remained unresolved. As per them, not raising of bills as per milestones and raising of a consolidated bill for the remaining amount does not show any dispute about the debt, and hence, there is no reason that the debt/ default cannot be considered to have happened and the application is entitled to be admitted and the CIRP proceedings be initiated against the Corporate Debtor.

**15.** The above contention of the Operation Creditor has not been



found to be tenable as the nature of dispute on quality of the product provided by the Operational Creditor is very much evident from the e-mail dated 20.01.2021 (raised much before sending of notice u/s 8) sent by the Corporate Debtor to Operational Creditor stating that *“Little weird you are asking for the payment for which delivery is still pending. Can you please sync with your team before following up for payments. Also, there are enough escalation on the current project from the client regarding the quality of the project. Based on project delivery and quality will see the payment- process accordingly”* Thereafter, series of emails have been exchanged between parties but issues regarding quality of product remained unresolved. A dispute can be evidenced by the records being maintained by the parties i.e. Operational Creditor and Corporate Debtor showing raising of any issue relating to amount of debt or quality of goods or breach of any terms and condition of supply of goods, which in this case is quite evident from the correspondences having been taken place between the parties through emails, as has already been discussed in this order, which finally culminated into filing of indemnity proceedings at the Delhi High Court Mediation



Centre under Section 12A of the Commercial Courts Act, 2015. Therefore, we are satisfied that there is a '**pre-existing dispute**' between the Operational Creditor and the Corporate Debtor.

**16.** Even after receiving notice of dispute u/s 8(2)(a), the operational Creditor filed this application thus, contravening Section 9(1) of the Code which states that the operational creditor can only make an application to the Adjudicating Authority, if it has not received a notice of dispute from the corporate debtor.

**17.** After perusing the facts, we are of the view that the existence of pre-existing dispute is patently visible in this case. The reliance is placed upon the judgment of Hon'ble Supreme Court in ***Mobilox Innovations Private Limited Vs. Kirusa Software Private Limited (2018) 1 SCC 353*** wherein it was held that:

*"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.*

*...51. It is clear, therefore, that once the operational creditor has filed an application, which is otherwise complete, the adjudicating authority must reject the application under Section 9(5)(2)(d) if notice of dispute has been received by the operational creditor or there is a record of dispute in the information utility. It is clear that such notice must bring to the notice of the operational creditor the “existence” of a dispute or the fact that a suit or arbitration proceeding relating to a dispute is pending between the parties. Therefore, all that the adjudicating authority is to see at this stage is whether there is a plausible contention which requires further investigation and that the “dispute” is not a patently feeble legal argument or an assertion of fact unsupported by evidence. It is important to separate the grain from the chaff and to reject a spurious defence which is mere bluster. However, in doing so, the Court does not need to be satisfied that the defence is likely to succeed. The Court does not at this stage examine the merits of the dispute except to the extent indicated above. So long as a dispute truly*



*exists in fact and is not spurious, hypothetical or illusory, the adjudicating authority has to reject the application.*

54. ....We have seen that a “dispute” is said to exist, so long as there is a real dispute as to payment between the parties that would fall within the inclusive definition contained in Section 5(6).

56. Going by the aforesaid test of “existence of a dispute”, it is clear that without going into the merits of the dispute, the appellant has raised a plausible contention requiring further investigation which is not a patently feeble legal argument or an assertion of facts unsupported by evidence. The defense is not spurious, mere bluster, plainly frivolous or vexatious. A dispute does truly exist in fact between the parties, which may or may not ultimately succeed, and the Appellate Tribunal was wholly incorrect in characterizing the defense as vague, got-up and motivated to evade liability”.

*(Emphasis Supplied)*

- 18.** The present application is not maintainable in lieu of the pre-existing dispute and the IBC cannot be used as a recovery forum. The same was held in **Chryso (India) Pvt. Ltd. vs. Sri Chowdeshwari Concrete Pvt. Ltd. (13.05.2021 - NCLT - Bengaluru) : MANU/NC/1169/2021 :**

*“6. We may state at the very outset that it is a settled position of law that the provisions of Code cannot be invoked for justified reasons as per the Code. The Hon'ble Supreme Court in the case of Mobilox Innovations Private Limited v. Kirusa Software Private Limited MANU/SC/1196/2017:*



*2018 (1) SCC 353 has inter alia held that I & B Code, 2016 is not intended to be a substitute to a recovery forum and cannot be used to jeopardise the financial health of an otherwise solvent company by pushing it into insolvency. It is also pertinent to mention here that the Hon'ble Supreme Court in the case of K. Kishan v. Vijay Nirman Company Private Limited clarified that the Petitioners cannot use IBC either prematurely or for extraneous considerations or as substitute for debt enforcement procedures.”*

**19.** Since the aforesaid dispute was raised before issuance of notice u/s 8, it comes under **pre- existing dispute** and hence, this application is liable to be dismissed u/s 9(5)(ii)(d).

**20.** Therefore, the petition CP (IB)No.6/ALD/2022 filed by the Operational Creditor is **hereby dismissed**.

*-Sd-*

**(Ashish Verma)**  
**Member (Technical)**

*-Sd-*

**(Praveen Gupta)**  
**Member (Judicial)**

**Dated : 04.09.2023**

*Aditi Kharbanda*  
*(LRA)*