NATIONAL COMPANY LAW APPELLATE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

Company Appeal (AT) (Insolvency) No. 2072 of 2024

[Arising out of the Impugned Order dated 04.09.2024 passed by the Adjudicating Authority, National Company Law Tribunal, Mumbai Bench-V in C.P. (IB) No. 603/MB/2021]

In the matter of:

Union Roadways Limited,
having its office at:
113/10, 2nd Floor, Gee Gee Shroff Centre
Ponamallee High Road, Chennai 600084, India

...Appellant

Versus

Ice Steel 1 Private Limited,
Room No.7 & 8, First Floor, Onlooker Building,
Sir Pherozeshah Mehta Road, Fort,
Mumbai, 40000, India
Email rajesh.jayaraman@steel1india.com

.... Respondent

Present:

For Appellant : Mr. Pai Amit and Ms. Bhavana Duhoon, Advocates.

For Respondent : Mr. Arun Sri Kumar, Advocate.

J U D G M E N T
(Hybrid Mode)

Per: Barun Mitra, Member (Technical)

The present appeal filed under Section 61 of Insolvency and Bankruptcy Code 2016 ('**IBC**' in short) by the Appellant arises out of the Order dated 04.09.2024 (hereinafter referred to as '**Impugned Order**') passed by the Adjudicating Authority (National Company Law Tribunal, Mumbai Bench-V) in Company Petition (IB) No. 603/MB/2021. By the impugned order, the Adjudicating Authority has dismissed Section 9 application filed by the

Appellant-Operational Creditor. Aggrieved by the impugned order, the present appeal has been preferred by the Appellant.

2. Narrating the factual background, it was submitted by the Ld. Counsel of the Appellant that the Operational Creditor was engaged in the business of providing transportation and trucking services to the Corporate Debtor since 2017. The Corporate Debtor had placed several work orders on the Appellant-Operational Creditor for transportation of their goods. The Appellant discharged their service obligations and had submitted invoices from 24.06.2019 to 24.02.2020 for payment by the Corporate Debtor. Further in terms of the contract of services, the Corporate Debtor had to make payment under each invoice within 14 days failing which 24% p.a. interest was leviable for delayed payment. It was submitted that the Appellant-Operational Creditor had raised 247 invoices for the period 24.06.2019 to 24.02.2020 for a total amount of Rs 3.57 Cr. against which only Rs 10.08 lakh had been paid by the Corporate Debtor on 30.12.2020. As the balance amount of Rs 3.47 Cr. continued to remain unpaid, inspite of several reminders to pay, the Operational Creditor sent a Section 8 Demand Notice to the Corporate Debtor dated 15.04.2021 claiming Rs 3.47 Cr. as the principal component of the operational debt alongwith Rs 1.24 Cr. towards interest component amounting to a total operational debt of Rs 4.72 Cr. including interest. The Corporate Debtor failed to respond to the Section 8 Demand Notice following which the Appellant-Operational Creditor filed the Section 9 petition before the Adjudicating Authority basis these 247 invoices which constituted the subject matter of the Section 9 petition. The Adjudicating

Authority having dismissed the Section 9 application, the Appellant has come up in appeal.

3. Assailing the impugned order, it was contended that Adjudicating Authority had come to the wrong conclusion that the operational debt claimed by the Operational Creditor was not a crystallized amount. The Adjudicating Authority had ignored the fact that the Corporate Debtor had acknowledged the debt arising out of these 247 invoices and their liability to make the payments. It is the contention of the Appellant that the Corporate Debtor had never raised any objection or dispute with respect to the invoices dated 24.06.2019 to 24.02.2020 either at any time as and when they were raised or at any time prior to the issue of statutory Demand Notice dated 15.04.2021. The Corporate Debtor having not responded to the Section 8 Demand Notice, the invoices remain undisputed. Hence, when the invoices were never disputed nor any notice of dispute raised pursuant to receipt of Section 8 Demand Notice, there is no basis to assert pre-existing dispute between the Operational Creditor and the Corporate Debtor. It was therefore emphatically contended that the operational debt qua the invoices between 24.06.2019 and 24.02.2020 was an undisputed and a crystallised debt. Submission was pressed that the Corporate Debtor in their e-mail dated 04.02.2022 had clearly acknowledged that there is an outstanding amount of Rs 1.53 Cr. towards the Appellant. A debt once acknowledged cannot be disputed subsequently. This outstanding quantum of debt being above the threshold limit, made it fit case for admission of Section 9 petition. The Appellant had failed to respond to the Section 8 Demand Notice within the prescribed 10 days period under Section 8(2) of the IBC. The failure to raise a genuine dispute in response to the statutory notice establishes the default. The invoices have been disputed subsequently only as an afterthought after the issue of the Section 8 Demand Notice. Reliance was placed on the judgment of the Hon'ble Supreme Court in ***Mobilox Innovations Pvt. Ltd. Vs Kirusa Software Pvt. Ltd. (2018) 1 SCC 353*** to contend that spurious defence and feeble disputes raised by the Corporate Debtor ought to be rejected unless it is shown that there was a plausible dispute which required investigation. The Adjudicating Authority had thus erred in holding that there was a pre-existing dispute between the parties.

4. Refuting the submissions made by the Appellant, it has been contended by the Ld. Counsel of the Respondent that during the period 25.02.2020 to 30.09.2021, from time to time, several payments had been made by the Corporate Debtor to the Appellant amounting Rs. 2.89 Cr. towards the 274 invoices which the Appellant has claimed to be outstanding and made the basis of their Section 9 application. The Appellant never denied the receipt of payment of Rs. 2.89 Cr. but falsely claimed that these amounts has been appropriated towards "previously pending invoices". No such list of older pending invoices had ever been made available at any stage prior to the appeal. Hence, the "older pending invoices" is only a smoke-screen to claim that payments were still outstanding. It was vehemently contended that the Appellant could not have unilaterally appropriated these payments towards "previously pending invoices" contrary to their clear directions in their e-mail communications that these payments were to be made towards invoices which formed part of 274 invoices. It was also pointed out that several invoices which form the basis of the Section

9 petition suffer from grave infirmities for payment against many such invoices had admittedly been received by the Appellant but was still shown as outstanding in the Section 9 petition. Thus, the Section 9 petition was based on invoices which have been falsely claimed by the Appellant to have remained unpaid. Buttressing their arguments that the invoices were disputed it was canvassed that the invoices of the Appellant are inflated, fabricated and not supported by necessary documents. The Respondent contended that the invoices are without lorry receipt, challan slip, proof of delivery documents and there is incidence of overcharging including levy of halting and detention charges etc. Further non-crystallisation of the debt amount has also been occasioned by the fact that there is clear of lack of consensus between the parties with respect to interest payment in the event of delayed settlement of invoices. Request for reconciliation was also made by them because of non-submission of relevant supporting documents by the Operational Creditor and lack of proper accounting of the payments already made. Further in aid of their contention of being a solvent entity with capacity to pay, much emphasis was laid on the fact that they had never showed any lack of willingness to make payments in respect of outstanding debt which fell in the undisputed category as is effectively demonstrated by their conduct in terms of payments made between 25.02.2020 and 30.09.2021. Towards resolving the dispute of uncrystallised amount of operational debt, they had consistently taken up the issue of reconciliation of accounts with the Operational Creditor but to no avail. Instead the Operational Creditor has been trying to take recourse to the IBC proceedings as a recovery

mechanism of recouping uncrystallized debt which is impermissible and hence the Adjudicating Authority has rightly rejected the Section 9 application.

5. We have duly considered the arguments advanced by the Learned Counsel for the parties and perused the records carefully. The crux of the matter in the present case is for us to determine whether the Adjudicating Authority was right in holding that there was a plausible dispute which had been raised by the Corporate Debtor which require further investigation.

6. A cursory look at the statutory provisions of the IBC reveals that Section 8(2) obligates a Corporate Debtor who has been delivered a Demand Notice under Section 8(1) by Operational Creditor to bring to the notice of the Operational Creditor the existence of a dispute. In the present case, it is an admitted fact that the service of the Demand Notice could not be effected on the registered office of the Corporate Debtor. While the Appellant has claimed that the demand notice was purportedly served by e-mail, however, the Respondent has denied the receipt of the Demand Notice. Be that as it may, there is no dispute that no reply was received from the Respondent to the Section 8 Demand Notice and the Appellant went ahead and filed the Section 9 application.

7. It is a well settled proposition that for a pre-existing dispute to be a justifiable ground to thwart an application under Section 9, the dispute raised must be truly existing either at the time of filing a reply to notice of demand as contemplated by Section 8(2) or at the time of filing the Section 9 application. In the present case, as already observed by us, while it is not contested that there was no Notice of dispute from the Corporate Debtor in response to the Section 8 demand notice, the Corporate Debtor has contested the service of of the Section

8 Demand Notice. In such circumstances, the Adjudicating Authority was required to look into the substance of the pleadings made in response to the Section 9 application to find out whether the Corporate Debtor had alleged pre-existing dispute and if so whether any real dispute is discernible from the stated facts.

8. It is an undisputed fact that the Corporate Debtor had filed a detailed reply to the Section 9 petition on 25.04.2022. At this stage we may take notice of the reply to the Section 9 application, the relevant extracts of which are as placed below:

> *"….*
>
> *3) The Corporate Debtor vehemently deny that they are liable to pay a sum of Rs. 4,72,08,491/- as is claimed by the Applicant in the present application. Similarly, the Corporate Debtor deny and dispute that payments in respect of total 274 invoices aggregating to a sum of Rs 3,47,27,033/- alongwith interest @ 24 % thereon amounting to Rs. 1,24,81,458/- as on 13.04.2021 is due and payable by the Corporate Debtor to the Applicant. The Corporate Debtor further states that the said amount being claimed by the Applicant in the application is an exaggerated amount, which is disputed and vehemently denied. The Applicant has over charged the Corporate Debtor and that many of the invoices raised by the Applicant were disputed and never accepted by the Corporate Debtor. Moreover, the Corporate Debtor has made various on- account payments to the Applicant against the said invoices and has from time to time called upon them to provide reconciliation of account. However, on one or the other pretext, the Applicant failed and neglected to provide the same to the Corporate Debtor. The Corporate Debtor further denies that they are liable to pay any interest @ 24 % p.a amounting to Rs. 1,24,81,458/ -. The Corporate Debtor submits that they had never agreed to pay any interest @ 24 % p.a. to the Applicant at any point of time. Moreover, even the Applicant has never issued any Debit note and/or claimed interest payments from the Corporate Debtor.*
>
> *….*
>
> *5) Be that as it may, in the month of July, 2021 discussions were held between the Applicant and Corporate Debtor for amicable settlement of all their pending issues and that it was mutually agreed between the parties*

that the Corporate debtor will send their accounts statement for review to the Applicant and subsequently, after reviewing, the Applicant will send some person to Ranipet office of the Corporate Debtor with all the relevant supporting documents in respect of their said claim so as to close all the pending issues. It was further agreed that the Corporate Debtor will restart making on account payments to the Applicant. It is pertinent to mention herein that during the course of said discussion, the Applicant has informed the Corporate Debtor that their bank account has changed and requested the Corporate Debtor to effect on-account payments in the said new bank account bearing No 991316694 maintained with Kotak Mahindra Bank. As a matter of fact, the Corporate debtor vide its email dated 23/07/2021 put the said fact on record and further on 23/07/2021 itself, they made on account payments of Rs.39,33,216/- to the Applicant in their said new bank account and further requested the Applicant to close the process of reconciliation of accounts at the earliest. Here to annexed and marked as ***Exhibit "R-1"*** *is a copy of said email correspondences dated 23/07/2021.*

....

8) It is needs to be mentioned herein that during the period from 25/02/2020 to 30/09/2021, the Corporate Debtor made substantial payments to the tune of Rs. 2,89,11,221/- to the Applicant in respect of the subject invoices raised by the Applicant. The details of the said payments made by the Corporate Debtors to the Applicant are as under:

Date	***Amount in INR***
25-02-2020	*5,00,000*
03-03-2020	*4,60,932*
07-03-2020	*9,87,540*
13-03-2020	*7,50,000*
17-03-2020	*10,13,569*
19-05-2020	*6,00,312*
26-05-2020	*5,04,616*
09-06-2020	*2,01,867*
15-06-2020	*2,00,414*
22-06-2020	*6,12,130*
02-07-2020	*8,49,004*
17-07-2020	*4,21,183*
23-07-2020	*5,00,624*
14-08-2020	*4,00,438*
25-08-2020	*6,00,777*
11-09-2020	*5,00,214*
22-09-2020	*8,03,628*
28-09-2020	*10,06,325*

12-10-2020	*4,98,310*
22-10-2020	*6,94,378*
29-10-2020	*6,01,971*
06-11-2020	*9,92,165*
24-11-2020	*9,96,354*
04-12-2020	*12,73,046*
30-12-2020	*10,08,208*
23-07-2021	*39,33,216*
25-08-2021	*40,00,000*
30-09-2021	*40,00,000*
Total paid	***2,89,11,221/-***

13) The Corporate Debtor further submits that despite repeated follow up and reminder the Applicant to provide proper invoices alongwith all supporting documents and do reconciliation of account. However, the Applicant with a malafide intention have deliberately failed and neglected to do so. It is further submitted that the Applicant is merely attempting to use the present proceedings "for a purpose other than for the resolution of insolvency" and as a tool to arm-twist the Corporate Debtor into paying the unjust and disputed amounts. The present application is merely an attempt by the Applicant to harass the Corporate Debtor to extract exaggerated amount, which is neither legally due nor payable by the Corporate Debtor to the Applicant and thus, the present application deserves to be dismissed.

When we look at the above reply to the Section 9 application, we notice that there is a categorical denial of outstanding operational debt by the Corporate Debtor besides raising several grounds to show that there was a pre-existing dispute between the parties with respect to the operational debt.

9. We come to the first bone of contention between the two parties raised at para 8 of the pleadings in the reply of the Corporate Debtor to the Section 9 application. It is the case of the Appellant that the Corporate Debtor had defaulted in clearing their outstanding debt. Without denying the fact that payments amounting Rs 2.89 Cr. was made by the Corporate Debtor during the period 25.02.2020 and 30.09.2021, it was contended that these payments were made by the Corporate Debtor towards invoices for the period 25.03.2020 to

24.03.2021 and not towards the pending invoices of Rs 3.47 Cr. which formed the basis of the Section 9 petition. Since the two parties were maintaining running accounts, it was contended that the Appellant was entitled to appropriate the payments received from the Corporate Debtor towards any lawful debt which was due and payable. Accordingly, these payments were appropriated by the Appellant towards "older pending invoices". Further, when the Corporate Debtor did not specify to the Appellant as to which debt of theirs should be covered by the payments made by them, the Appellant exercised their discretion to appropriate payments towards "older pending invoices".

10. Per contra, it is the contention of the Corporate Debtor that in terms of Section 59 of the Indian Contract Act, 1872, it is for the Corporate Debtor to elect as to how the payment made by them is to be appropriated by the Operational Creditor. It was for the Corporate Debtor to specify the particular debt for which payment made by them were to be adjusted. It was contended that payments made by them between 25.02.2020 and 30.09.2021 were to be appropriated towards invoices raised between 24.06.2019 to 24.02.2020 and there being clear indication given by the Corporate Debtor on how the payment was to be adjusted, the Appellant could not have appropriated these payments in any other manner. Several e-mail correspondences were claimed to have been sent by the Respondent to the Appellant dated 10.07.2020, 28.07.2020, 24.08.2020 and 26.08.2020 stating that payments made by them were towards invoices which formed part of 274 invoices which have been claimed by the Appellant to have remained unpaid. This relates to six invoices amounting to Rs 11.51 Lakhs bearing Nos. 12370, 12372, 12373, 12378, 12379 and 12380. The

Respondent has also adverted attention to contradiction in the pleadings made by the Appellant with respect to manner of appropriation of payments made by the Respondent. It is asserted that while the Appellant has claimed that the payments were appropriated towards "previously pending invoices", in the computation sheets which have been placed by them at pages 1256-1258 of the Appeal Paper Book, the payments have been adjusted against "subsequent invoices" between 15.03.2020 and 30.09.2021. It was contended that when the two parties were not at ad idem on how the payments made were to be adjusted against the outstanding debt, it was clear that the debt amount had not crystallised. Therefore, the Adjudicating Authority had not erred in holding that the debt claimed in the Section 9 petition was not a crystallised amount.

11. Having noted the rival contentions of both parties, we now proceed to return our findings on whether the payment made by the Corporate Debtor between 25.02.2020 and 30.09.2021, which payment has also been admitted by the Operational Creditor had the ingredients of pre-existing dispute between the two parties. We find that the Respondent, on the one hand, has contended that the payment of Rs 2.89 Cr. was made by them towards invoices which formed the basis of the Section 9 application while the Appellant, on the contrary, has adjusted these payments towards invoices of the period 25.03.2020 to 25.03.2021 which do not form part of the Section 9 invoices. It is the contention of the Respondent that the Operational Creditor had wrongly settled the payments made by them against invoices not identified by them. Further they had appropriated the payments against invoices raised between 25.03.2020 and 25.03.2021 which cannot be subject of action under Section 9 because of Section

10A bar. On the other hand, it is the case of the Appellant that the two parties were maintaining running accounts and hence the Appellant was entitled to appropriate the payment towards any lawful debt which was due and payable and therefore they had correctly appropriated by them towards older pending invoices. Thus, there is a manifest dispute between them over the invoices against which the payments made by the Corporate Debtor were appropriated. In view of the conflicting claims made by both parties with regard to the invoices against which payments were purportedly released by the Corporate Debtor and the invoices against which these payments were adjusted by the Appellant clearly shows dispute between parties. This was therefore a clear bone of contention between the two parties which needs adjudication by evidencing which is beyond the remit of the summary jurisdiction of the Adjudicating Authority.

12. Coming to another ground of pre-existing dispute, we find that the Corporate Debtor at para 3 of their reply to the Section 9 application has raised the contention that the amount claimed by the Appellant is an exaggerated amount.

13. One of the reasons for the Corporate Debtor finding the amount to be inflated is the interest component. The Appellant has however canvassed that interest liability finds clear mention in the invoices and the Corporate Debtor having never raised objections with respect to invoices at the time of receipt of the invoices cannot raise this dispute now. It was submitted that the Respondent has now raised this dispute as an afterthought to avoid payments obligations. It is the counter case of the Respondent that the Operational Creditor cannot make interest claim unilaterally when the element of interest on delayed payment is not supported by any written agreement or contract to that effect. Mere stipulation of interest payment unilaterally in the invoices cannot create binding obligation on the other party to pay interest until and until there is mutual understanding between the parties in this regard. No such understanding is either buttressed by conduct and practice.

14. Coming to our findings on the tenability of holding the interest component to be a ground of dispute, we notice that nothing has been placed on regard to demonstrate that the Corporate Debtor had ever paid interest to the Operational Creditor in the past for delayed payment. The interest clause does not appear to have been enforced earlier. We are therefore inclined to agree with the Respondent-Corporate Debtor that mere mention of interest claim in the invoice without any mutually acceptable agreement between them do not constitute sufficient basis for including interest component in the computation of the outstanding operational debt and that creates a shadow of dispute in respect of the operational debt.

15. We also notice that the Respondent has placed on record a list of 135 invoices wherein there is a discrepancy in the amount shown in the invoices as placed by the Appellant before the Adjudicating Authority and the amounts reflected against the same invoices sent to the Respondent. Hence it is contended by the Corporate Debtor that this variation in the amounts for the same transactions is clear evidence of operational debt being a disputed amount. The list of invoices containing discrepancies as brought on record by the Respondent are as reproduced below:-

Sr.	Inv. No.	Amount shown in invoice placed on record by the Appellant before the NCLT (in INR)	Appeal Page No.	Amount shown in invoice issued to the Respondent (in INR)	Objections Page No.
1	12370	1,72,305	Vol. I: 112	1,88,809	53
2	12372	1,58,747	Vol. I: 115	1,64,747	54
3	12373	1,78,806	Vol. I: 118	1,93,806	55
4	12413	1,54,067	Vol. I: 198	1,74,738	56
5	12418	1,55,700	Vol. I: 212	1,68,658	57
6	12419	2,00,877	Vol. I: 216	2,36,947	58
7	12420	1,47,041	Vol. I: 218	1,68,817	59
8	12422	1,40,000	Vol. I: 225	1,55,379	60
9	12423	1,40,000	Vol. I: 227	1,64,379	61
10	12427	1,53,000	Vol. I: 240	1,65,052	62
11	12428	1,40,000	Vol. I: 244	1,50,879	63
12	12454	1,40,000	Vol. II:330	1,59,879	64
13	12455	1,40,000	Vol. II: 333	1,52,379	65
14	12456	1,47,938	Vol. II: 336	1,60,768	66
15	12461	142,260	Vol. II: 340	1,69,771	67
16	12462	1,40,000	Vol. II: 343	1,71,879	68
17	12463	1,40,000	Vol. II: 346	1,74,879	69
18	12464	1,47,705	Vol. II: 349	1,81,521	70
19	12465	1,40,000	Vol. II: 352	1,65,879	71
20	12466	1,40,000	Vol. II: 357	1,74,879	72
21	12467	1,40,000	Vol. II: 360	1,74,879	73
22	12468	1,43,707	Vol. II: 363	1,78,795	74

23	*12469*	*1,40,000*	*Vol. II: 366*	*1,74,879*	*75*
24	*12470*	*1,40,000*	*Vol. II: 369*	*1,50,879*	*76*
25	*12473*	*1,62,296*	*Vol. II: 375*	*1,82,122*	*77*
26	*12477*	*1,40,990*	*Vol. II: 378*	*1,75,928*	*78*
27	*12479*	*1,44,762*	*Vol. II: 381*	*1,72,314*	*79*
28	*12501*	*1,40,000*	*Vol. II: 386*	*1,74,879*	*80*
29	*12507*	*1,46,700*	*Vol. II: 405*	*1,62,879*	*81*
30	*12508*	*1,47,178*	*Vol. II: 408*	*1,62,114*	*82*
31	*12509*	*1,40,000*	*Vol. II: 411*	*1,77,879*	*83*
32	*12510*	*1,41,850*	*Vol. II: 414*	*1,82,406*	*84*
33	*12511*	*1,61,254*	*Vol. II: 417*	*1,77,235*	*85*
34	*12512*	*1,43,700*	*Vol. II: 420*	*1,58,379*	*86*
35	*12519*	*1,40,000*	*Vol. II: 423*	*1,70,379*	*87*
36	*12520*	*1,51,718*	*Vol. II: 426*	*1,84,260*	*88*
37	*12521*	*1,46,700*	*Vol. II: 429*	*1,64,379*	*89*
38	*12522*	*1,37,700*	*Vol. II: 432*	*1,55,379*	*90*
39	*12523*	*1,37,700*	*Vol. II: 435*	*1,47,879*	*91*
40	*12526*	*1,37,700*	*Vol. II: 438*	*1,68,879*	*92*
41	*12527*	*1,71,250*	*Vol. II: 441*	*1,90,856*	*93*
42	*12530*	*1,45,200*	*Vol. II: 450*	*1,61,379*	*94*
43	*12531*	*1,43,700*	*Vol. II: 453*	*1,61,379*	*95*
44	*12532*	*1,43,700*	*Vol. II: 456*	*1,59,879*	*96*
45	*12533*	*1,37,700*	*Vol. II: 459*	*1,67,379*	*97*
46	*12534*	*1,48,200*	*Vol. II: 462*	*1,70,379*	*99*
47	*12536*	*1,48,200*	*Vol. II: 468*	*1,68,879*	*100*
48	*12537*	*1,51,416*	*Vol. II: 471*	*1,62,879*	*101*
49	*12538*	*1,70,459*	*Vol. II: 474*	*1,91,727*	*102*

50	*12539*	*1,48,200*	*Vol. II: 477*	*1,67,379*	*103*
51	*12542*	*1,42,200*	*Vol. II: 480*	*1,56,879*	*104*
52	*12543*	*1,49,700*	*Vol. II: 483*	*1,70,379*	*105*
53	*12544*	*1,49,700*	*Vol. II: 486*	*1,70,379*	*106*
54	*12545*	*1,84,113*	*Vol. II: 489*	*2,06,058*	*107*
55	*12546*	*1,42,200*	*Vol. II: 492*	*1,59,879*	*108*
56	*12547*	*1,69,879*	*Vol. II: 495*	*1,90,777*	*109*
57	*12548*	*1,39,301*	*Vol. II: 498*	*1,52,599*	*110*
58	*12549*	*1,52,700*	*Vol. II: 501*	*1,77,879*	*111*
59	*12550*	*1,65,278*	*Vol. II: 504*	*1,92,511*	
60	*12551*	*1,60,178*	*Vol. II: 507*	*1,78,423*	*112*
61	*12552*	*1,53,925*	*Vol. III: 510*	*1,72,364*	*113*
62	*12556*	*1,47,113*	*Vol. III: 513*	*1,64,822*	*114*
63	*12557*	*1,52,700*	*Vol. III: 516*	*1,74,879*	*115*
64	*12558*	*1,37,700*	*Vol. III: 519*	*1,47,879*	*116*
65	*12561*	*1,70,040*	*Vol. III: 528*	*2,06,778*	*117*
66	*12563*	*51,000*	*Vol. III: 532*	*59,400*	*118*
67	*12564*	*46,000*	*Vol. III: 535*	*47,000*	*119*
68	*12573*	*46,000*	*Vol. III: 546*	*47,000*	*120*
69	*12584*	*1,40,700*	*Vol. III: 564*	*1,66,815*	*121*
70	*12590*	*1,51,012*	*Vol. III: 582*	*1,55,512*	*122*
71	*12597*	*1,43,700*	*Vol. III: 603*	*1,62,879*	*123*
72	*12608*	*1,68,500*	*Vol. III: 631*	*1,74,000*	*124*
73	*12610*	*1,37,700*	*Vol. III: 640*	*1,43,700*	*125*
74	*12611*	*1,57,700*	*Vol. III: 643*	*1,65,700*	*126*
75	*12612*	*1,68,500*	*Vol. III: 649*	*1,74,000*	*127*
76	*12613*	*1,57,700*	*Vol. III: 655*	*1,63,200*	*128*

77	*12614*	*1,57,700*	*Vol. III: 661*	*1,63,200*	*129*
78	*12617*	*1,79,000*	*Vol. III: 676*	*1,99,815*	*130*
79	*12623*	*1,68,500*	*Vol. III: 688*	*1,75,000*	*131*
80	*12624*	*1,57,700*	*Vol. III: 694*	*1,61,200*	*132*
81	*12625*	*1,57,700*	*Vol. III: 700*	*1,74,000*	*133*
82	*12626*	*1,57,700*	*Vol. III: 706*	*1,65,700*	*134*
83	*12627*	*1,57,700*	*Vol. III: 712*	*1,64,200*	*135*
84	*12628*	*1,57,700*	*Vol. III: 718*	*1,64,200*	*136*
85	*12630*	*1,57,700*	*Vol. III: 731*	*1,65,700*	*137*
86	*12631*	*1,57,700*	*Vol. III: 737*	*1,63,200*	*138*
87	*12637*	*46,000*	*Vol. III: 755*	*47,000*	*139*
88	*12638*	*46,000*	*Vol. IV: 759*	*59,400*	*140*
89	*12639*	*57,000*	*Vol. IV: 762*	*59,400*	*141*
90	*12640*	*49,000*	*Vol. IV: 767*	*59,400*	*142*
91	*12641*	*54,000*	*Vol. IV: 773*	*59,400*	*143*
92	*12642*	*1,48,500*	*Vol. IV: 776*	*1,51,500*	*144*
93	*12651*	*1,42,200*	*Vol. IV: 804*	*1,55,379*	*145*
94	*12652*	*1,47,900*	*Vol. IV: 807*	*1,57,900*	*146*
95	*12653*	*1,57,700*	*Vol. IV: 813*	*1,73,700*	*147*
96	*12654*	*1,37,700*	*Vol. IV: 819*	*1,46,900*	*148*
97	*12656*	*57,000*	*Vol. IV: 822*	*59,400*	*149*
98	*12659*	*1,63,700*	*Vol. IV: 826*	*1,75,200*	*150*
99	*12660*	*1,58,200*	*Vol. IV: 832*	*1,67,700*	*151*
100	*12662*	*1,58,200*	*Vol. IV: 842*	*1,71,636*	*152*
101	*12663*	*1,58,200*	*Vol. IV: 848*	*1,77,636*	*153*
102	*12664*	*1,58,200*	*Vol. IV: 854*	*1,67,700*	*154*
103	*12665*	*1,47,900*	*Vol. IV: 860*	*1,53,900*	*155*

104	*12667*	*1,37,700*	*Vol. IV: 867*	*1,46,700*	*156*
105	*12668*	*54,000*	*Vol. IV: 870*	*59,400*	*157*
106	*12670*	*1,59,811*	*Vol. IV: 873*	*1,65,311*	*158*
107	*12698*	*1,40,000*	*Vol. IV: 929*	*1,49,379*	*159*
108	*12699*	*1,44,200*	*Vol. IV: 932*	*1,58,200*	*160*
109	*12700*	*1,66,700*	*Vol. IV: 939*	*1,81,700*	*161*
110	*12706*	*1,44,200*	*Vol. IV: 969*	*1,54,200*	*162*
111	*12719*	*59,400*	*Vol. IV: 998*	*61,101*	*163*
112	*12720*	*59,400*	*Vol. IV: 1002*	*62,400*	*164*
113	*12724*	*1,52,235*	*Vol. V: 1023*	*1,55,943*	*165*
114	*12725*	*59,400*	*Vol. V: 1026*	*62,400*	*166*
115	*12727*	*59,400*	*Vol. V: 1033*	*62,400*	*167*
116	*12729*	*59,400*	*Vol. V: 1041*	*68,400*	*168*
117	*12731*	*1,57,300*	*Vol. V: 1048*	*2,02,486*	*169*
118	*12733*	*1,57,715*	*Vol. V: 1057*	*1,69,998*	*170*
119	*12734*	*1,57,530*	*Vol. V: 1065*	*1,73,530*	*171*
120	*12735*	*1,57,256,*	*Vol. V: 1070*	*1,73,613*	*172*
121	*12741*	*59,400*	*Vol. V: 1080*	*68,400*	*173*
122	*12743*	*1,69,567*	*Vol. V: 1088*	*1,75,108*	*174*
123	*12744*	*1,80,055*	*Vol. V: 1094*	*1,88,487*	*175*
124	*12756*	*1,44,200*	*Vol. V: 1117*	*1,54,200*	*176*
125	*12757*	*1,44,200*	*Vol. V: 1125*	*1,61,700*	*177*
126	*12758*	*1,63,886*	*Vol. V: 1135*	*1,79,886*	*178*
127	*12759*	*1,48,200*	*Vol. V: 1141*	*1,55,700*	*179*
128	*12762*	*1,54,400*	*Vol. V: 1151*	*1,57,900*	*180*
129	*12763*	*1,53,584*	*Vol. V: 1157*	*1,71,084*	*181*
130	*12770*	*1,47,900*	*Vol. V: 1194*	*1,61,400*	*182*

131	*12772*	*59,400*	*Vol. V: 1199*	*62,400*	*183*
132	*12773*	*64,492*	*Vol. V: 1203*	*68,421*	*184*
133	*12775*	*59,400*	*Vol. V: 1209*	*66,900*	*185*
134	*12778*	*175280*	*Vol. V: 1224*	*184780*	*186*
135	*12779*	*204030*	*Vol. V: 1229*	*214940*	*187*

16. Though it was persuasively canvassed by the Corporate Debtor that clearly two sets of invoices for the same transactions reflecting varying amounts which were in circulation is a clear evidence of dispute we do not wish to dwell upon the discrepancies in these invoices as the Operational Creditor pointed out that the disputes in respect of the above 135 invoices cannot be relied upon as these had been raised for the first time by the Respondent in their written submission before the Adjudicating Authority after the hearing was closed thus denying them an opportunity to deal with the same.

17. We also notice that the Adjudicating Authority in the impugned order has extracted at paras 4.III, IV and V, two e-mails wherein both parties had agreed to a need for account reconciliation to settle their differences. We notice that at pointers 3 and 4 of the e-mail dated 23.06.2021, it has been clearly stated that payment would be made by the Respondent only in respect of "undisputed bills" in a phased manner and that "disputed items" would be resolved mutually. Similarly, the e-mail dated 15.11.2021 points out that the two parties had differences over the invoices against which the payments made by the Corporate Debtor were getting adjusted by the Appellant and that there should be a reconciliation of payments done so far. The Appellant has however contended that these e-mails cannot be relied upon since these were issued subsequent to the issue of Section 8 Demand Notice as well as filing of Section 9 application. We quite agree that the timing of these emails being post the filing of Section 9 application does not strictly qualify as a pre-existing dispute.

18. Nevertheless, even if we discount the issue of duality and discrepancy in the 135 invoices submitted by the Appellant to the Corporate Debtor and the invoices placed in their Section 9 application and the issue of reconciliation of accounts for the reasons noted by us at paras 16 and 17 above, we cannot fail to notice that the Appellant and Respondent had clear differences between themselves on the crystallised amount of operational debt. The Adjudicating Authority has rightly adverted attention to the issue of validity and accuracy of the invoices which has led to a situation of non-crystallization of the claim amount leading to the spectre of disputed debt.

19. The Hon'ble Supreme Court in its judgment in ***Mobilox Innovations Pvt. Ltd. Vs Kirusa Software Pvt. Ltd. (2018) 1 SCC 353*** has held that it is enough that a dispute exists. The Adjudicating Authority has to only look into the factual matrix as to whether there is a plausibility of dispute and that the defence of pre-existing dispute raised by the Corporate Debtor is not a feeble defence or unsupported by evidence without entering into adjudication of the dispute. The relevant extracts of the above judgment are as reproduced below:

> *"33…………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 maybe. In case the unpaid operational debt has been repaid, the corporate debtor shall within a period of the self-same 10 days sent and attested copy of the record of the electronic transfer of the unpaid amount from the bank account of the corporate debtor or send an attested copy of the record that an operational creditor has encashed a cheque or otherwise received payment from the corporate debt [Section 8(2) (b)]. It is only if, after the expiry of the period of*

the said 10 days, the operational creditor does not either receive payment from the corporate debtor or notice of dispute, that the operational creditor may trigger the insolvency process by filing an application before the adjudicating authority under Sections 9(1) and 9(2)………"

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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."

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"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."

20. If we apply the test laid down in ***Mobilox judgement*** by the Hon'ble Apex Court to the facts of the present case it is clear that the defence raised by the Corporate Debtor in their reply filed in Section 9 application is not illusory or moonshine. The present is not a case where there is undisputed debt for which insolvency can be asked for initiation by the Appellant. The Adjudicating Authority has, therefore, correctly applied the ratio of the ***Mobilox judgment*** in dismissing the Section 9 application and holding at Para 4 XIV of the impugned order:

> *“**XIV.** Therefore, considering the totality of circumstances, including the disputed nature of the debt, the Corporate Debtor's solvency, the payments made by the Corporate Debtor during the pendency of this matter, the withholding of payments due to non-cooperation in view of reconciliation of accounts, and the use of IBC as a recovery mechanism by the Operational Creditor, this Bench is of the view that this is not a fit case for admission into CIRP.”*

21. It is well settled that in Section 9 proceedings the Adjudicating Authority is not to enter into final adjudication with regard to existence of dispute between the parties regarding operational debt. Section 9 proceedings cannot be converted into proceedings for adjudication of disputes between the parties. What has to be looked into is whether the defence raises a dispute which needs further adjudication by a competent court. Disputes pertaining to contractual issues are not to be resolved in Section 9 proceedings. We are of the considered view that present is a case where pre-existing disputes between the parties is writ large. In the given facts and circumstances, this is not a case where the Adjudicating Authority could have admitted the Section 9 application. Hence, there was no error committed by the Adjudicating Authority in rejecting the Section 9 application.

22. For the forgoing reasons, we are of the considered view that the Adjudicating Authority has not committed any error in dismissing the Section 9 application filed by the Appellant. We do not find any merit in the Appeal. The

Appeal is dismissed. We however make it clear that in the event the Appellant seeks remedy before any other appropriate forum, it shall be open for them to do so in accordance with law. No order as to costs.

[Justice Ashok Bhushan]
Chairperson

[Barun Mitra]
Member (Technical)

Place: New Delhi

Date: 15.10.2025

Harleen/Abdul