



**IN THE NATIONAL COMPANY LAW TRIBUNAL, NEW DELHI**  
**COURT-V**

**Item No.-206**  
IB-387/ND/2021

**IN THE MATTER OF:**  
P & R Infraprojects Ltd.  
**Vs.**  
OFB Tech Pvt. Ltd.

....**Applicant**  
  
.....**Respondent**

**SECTION**  
U/s 9 IBC

**Order delivered on 10.11.2023**

**CORAM:**  
**SHRI MAHENDRA KHANDELWAL,**  
**HON'BLE MEMBER (JUDICIAL)**

**SHRI RAHUL BHATNAGAR,**  
**HON'BLE MEMBER (TECHNICAL)**

**PRESENT:**  
For the Applicant :  
For the Respondent :

**ORDER**

Order pronounced in open Court vide separate sheets. IB-387/ND/2021 stands **admitted**.

**Sd/-**  
**(RAHUL BHATNAGAR)**  
**MEMBER (T)**

**Sd/-**  
**(MAHENDRA KHANDELWAL)**  
**MEMBER (J)**



**IN THE NATIONAL COMPANY LAW TRIBUNAL  
COURT-V, NEW DELHI**

**CP IB NO. 387/(ND)/2021**

*An Application 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:**

**P & R Infraprojects Limited**

89, Lok Nayak Apartments,  
Sector-9, Rohini,  
Delhi, 110085.

**...Operational Creditor**

**Versus**

**OFB Tech Private Limited**

Shop No. G-22 C (UGF), D-1 (K-84),  
Green Park Main,  
New Delhi, 110016.

**...Corporate Debtor**

**Order Delivered on: 10.11.2023**

**CORAM:**

**SHRI MAHENDRA KHANDELWAL, HON'BLE MEMBER (JUDICIAL)**

**SHRI RAHUL BHATNAGAR, HON'BLE MEMBER (TECHNICAL)**

**APPEARANCES:**

**For the Applicant** : Adv Arun Bansal, Adv Anubhav Bansal

**For the Respondent:** Adv Kunal Tandon, Adv Richa Sandilya, Adv Bhavna  
Vijay, Adv Varnavee Mishra



## O R D E R

### **PER: MAHENDRA KHANDELWAL, MEMBER (JUDICIAL)**

1. This is a Company Petition filed under Section 9 of the Insolvency and Bankruptcy Code, 2016 (***“the Code”***) read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 by Mr. Paveljeet Singh Ruppal, Managing Director of **M/s P & R Infraprojects Limited** (***“Operational Creditor”***) duly authorized for initiation of Corporate Insolvency Resolution Process (***“CIRP”***) against **M/s OFB Tech Private Limited** (***“Corporate Debtor”***).
2. **M/s P & R Infraprojects Limited** (Operational Creditor) is a company, having its office at 89, Lok Nayak Apartments, Sector 9, Rohini, Delhi 110085. **M/s OFB Tech Private Limited** (Corporate Debtor) is a company registered under the Companies Act, 1956 [CIN- U74140DL2015PTC284428], having its registered office at Shop No. G-22 C (UGC) D-1 (K-84), Green Park Main, New Delhi 110016. The Corporate Debtor has Authorized Share Capital of Rs. 84,19,84,150/- (Eighty-Four Crore Nineteen Lakh Eighty-Four Thousand One Hundred Fifty) and Paid-Up Share Capital of Rs 26,27,07,650/- (Twenty-Six Crore Twenty-Seven Lakhs Seven Thousand Six Fifty)
3. The present Petition was filed on 22.07.2021 before this Adjudicating Authority by Mr. Paveljeet Singh Ruppal, the Managing Director of the Operational Creditor’s entity, duly authorized to initiate Corporate Insolvency Resolution Process (***“CIRP”***) proceedings under Section 9 of the Insolvency and Bankruptcy Code, 2016 (***“Code”***). The total amount claimed is Rs. 1,68,99,775 (Rupees One Crore Sixty-Eight Lakh Ninety-Nine Thousand Seven Hundred and Seventy-Five Only). The date of default is 31.03.2021.
4. ***Submissions by the Ld. Counsel appearing on behalf of the Operational Creditor.***
  - a) That the Operational Creditor deals with the sale and purchase of steel plates etc. and the Corporate Debtor had purchased various goods from time to time



from the Operational Creditor. The Corporate Debtor did not make the payments on the due dates and defaulted in making the due payments and is under debt of Rs. 1,09,73,880. The said debt fell due on 30.09.2018. The total amount which is to be received from Corporate Debtor is Rs. 1,68,99,775 (i.e. Rs. 1,09,73,880 as principal amount and Rs.59,25,895 as interest amount @ 24% as on 31.03.2021). The invoices in respect of said transactions are placed on record as Annexure A/5. The Petitioner has maintained the ledger showing the aforesaid amount.

- b) That the Corporate Debtor purchased goods from Operational Creditor during the period from 29.08.2018 to 31.08.2018. Out of which some goods were returned and the amount against the said goods was adjusted. A sum of Rs.4,58,30,792/- (i.e. Rs.4,43,28,807/- and Rs.15,01,986/- Penal Interest is placed on record as Annexure A-21 attached with IA/2779/2023) was adjusted against the dues of the concerned respondents i.e. M/s Oxyzo Financial Services Pvt. Ltd. and the balance amount of Rs.1,09,73,880/- was due as on 30.09.2018. The said debt fell due as on 30.09.2018. The total amount to be received is Rs.1,68,99,775/- which was due as on 31.03.2021 including interest.
- c) The Operational Creditor has maintained the ledger showing the aforesaid amount and the Corporate Debtor did not dispute the receipt of goods or the statement of account and even the balance amount as shown in the statement of account. The Operational Creditor issued demand notice under Section 8 of the Code on 13.02.2020 demanding payment from Corporate Debtor within 10 days. The Demand Notice was duly received by the Corporate Debtor. The Corporate Debtor by way of his reply has not disputed the receipt of goods or the statement of account, however raised a dispute saying that there was a Tripartite Agreement amongst the Operational Creditor, Corporate Debtor and one M/s Oxyzo Financial Services Pvt. Ltd. a subsidiary company of Corporate Debtor for disbursing loan to the Operational Creditor against the security of goods in the month of March



2018 and further submitted that the Corporate Debtor booked huge materials for Operational Creditor but due to loss suffered by Corporate Debtor, they were left with no option but to sell the goods kept in their custody in loss and sold the same in losses.

- d) However, the Corporate Debtor has not placed on record any document to show that the present transactions are part of the earlier loan transactions. However, the Corporate Debtor admits that the amount against the due loan amount stood adjusted from the present account as set-off against the payables under the “purchase financing facility”. The said amount stands duly reflected in the statement of account (Annexure A/6, page 215).
- e) The Corporate Debtor is trying to distort the fact without giving the exact position. The Corporate Debtor on the one hand says that the present purchase dated 29.08.2018 is for security and whereas, on the other hand submits that they sold the goods at losses (by 30.08.2018 i.e. very next day of purchase). That the present dispute has nothing to do with the M/s Oxyzo Financial Services Pvt. Ltd. as with regard to loan/ 'Purchase Finance Facility', the accounts with M/s Oxyzo Financial Services Pvt. Ltd. stands settled.
- f) The invoices were raised where the Corporate Debtor had purchased the goods. Whereas in respect of M/s Oxyzo Financial Services Pvt. Ltd., the goods were given as security and in the said case there was no issuing of invoices in favour of Corporate Debtor or M/s Oxyzo Financial Services Pvt. Ltd. The Corporate Debtor is trying to distort the fact by involving M/s Oxyzo Financial Services Pvt. Ltd who has nothing to do with the present matter. The e-mails pertain to "Purchase Finance Facility" with M/s Oxyzo Financial Services Pvt. Ltd, and are of month of April 2018. Whereas, the present purchase by the Corporate Debtor pertains to end of August 2018.
- g) That the Operational Creditor has no role to play for the goods which have been purchased by the Corporate Debtor after the purchase from Operational Creditor. The Operational Creditor is entitled to the invoice amount. The



dealing with M/s Oxyzo Financial Services Pvt. Ltd has nothing to do with the purchase of goods by the Corporate Debtor against the invoices as stated in the petition. The present matter is only with regard to the default in making payment of operational dues against the said invoices.

- h) That on the one hand, the Corporate Debtor claims the goods to be security against advance made by the M/s Oxyzo Financial Services Pvt. Ltd. whereas, on the other hand, the Corporate Debtor claims the goods to be in their own name. Once the goods were held as security, then in that case, the issuance of invoices in their favour does not arise. In the present case, it is clear from the records that the goods were duly purchased and were received by the Corporate Debtor in their own name and they further admit that they have sold the same to various customers. Therefore, the question of holding the goods as security does not arise at all. It is totally incorrect that Corporate Debtor was acting as facilitators for Operational Creditor. The Corporate Debtor is raising the dispute as it has defaulted in making the payment of operational dues against the said invoices.
- i) The statement of accounts clearly shows the due amount at the time of filing of the present petition and the same has not been paid by the Corporate Debtor till date. That the aforesaid would show that there was no existing dispute and the Corporate Debtor had already settled qua the loan account in respect of Tripartite Agreement. The Operational Creditor has also placed on record the details of the TDS certificate/ interest advice and even the charging of penal interest upto the date of final settlement of Loan account.
- j) That the Corporate Debtor did not place on record any statement of account qua the transactions in respect of loan account. However, the Operational Creditor has placed on record the transactions in the loan account with M/s Oxyzo Financial Services Pvt. Ltd. vide IA/2779/2023. The same would find the details of goods received under security and payment against the same. The same would also show the charging of interest and penal interest on the finance made available to the Operational Creditor. The same was placed on



record with IA/2779/2023. The same has not been objected to or denied by the Corporate Debtor.

- k) That the demand notice was issued showing the due amount as per account books of Operational Creditor. Some Credit Notes were never forwarded by the Corporate Debtor to the Operational Creditor, and the same came to the notice of Operational Creditor from GST portal, after issuance of demand notice and accordingly the credit of Rs.19,16,625/- and Rs.19,61,928/- were credited in the accounts of Corporate Debtor and similarly the TDS amount of penal interest of Rs. 15,01,989/- was credited and the present petition was after giving the credits of said amount on the relevant date. (i.e. the aforesaid amount of Rs.53,80,542/- was decreased from notice amount of Rs.1,63,54,418/-). As such the present petition was qua Rs. 1,09,73,880. There is no dispute in respect of supply of goods and receipt of goods by the respondent. A frivolous dispute is being raised only in order to delay the proceedings. The due amount is an admitted amount as the same has not been denied by the Corporate Debtor. Hence, the present application.

5. **Submission by the Learned Counsel appearing on behalf of the Corporate Debtor**

- a) The Corporate Debtor is a company incorporated under the provisions of the Companies Act, 2013, and is engaged in Business-to-Business trading of raw materials for manufacturing and infrastructure industry. The Corporate Debtor is also a parent company of a non-banking financial company namely, Oxyzo Financial Services Private Limited (hereinafter referred to as "Oxyzo") i.e., Oxyzo was a wholly owned subsidiary of the Respondent at the relevant time. In 2018, the Operational Creditor was facing a financial crunch as a result of which the Operational Creditor approached the Corporate Debtor requesting the Corporate Debtor to finance the purchase of the raw material from Steel Authority of India ("**SAIL**") on behalf of the Operational Creditor.
- b) On the basis of the representations made by the Operational Creditor, on 20.03.2018, Oxyzo (wholly owned subsidiary of the Respondent/Corporate



Debtor) sanctioned a 'Purchase Finance Facility' vide sanction letter dated 20.03.2018 (Reference No. 3574670XYZO) in favour of the Operational Creditor for a sum of Rs. 1 crore initially which was systematically increased to 13.91 crores. This is evident from the sanction letter dated 20.03.2018 and the Master Facilities Agreement dated 29.03.2018 along with other ancillary documents of the Reply.

- c) Since the Operational Creditor was unable to provide a security for the purposes of the hypothecation, it offered that the goods which will be purchased using the finance facility provided by Oxyzo to the Operational Creditor be retained by the Respondent/Corporate Debtor, for which the parties agreed that the Respondent/Corporate Debtor would charge service fees, site charges and logistics charges from the Operational Creditor towards storage and release of the goods and that the outstanding of Oxyzo will be adjusted by sale of the goods, if there is any.
- d) Accordingly, the Master Facilities Agreement in Clause 10 and 13 provides for set-off and indemnification. Schedule I of the Master Facilities Agreement further provides that no property was hypothecated in favour of Oxyzo.
- e) Thus, in effect, there are 4 parties involved in the transaction:
  - i. Oxyzo, which provided the Purchase Finance Facility to the Operational Creditor;
  - ii. The Operational Creditor, who took the Purchase Finance Facility from Oxyzo and provided the goods purchased from SAIL from the facility itself as security to Oxyzo;
  - iii. The Respondent/Corporate Debtor, who holds these goods as a security. Since the goods are movable in nature, the only manner of providing possession of the goods was by execution of the sale transaction between the Operational Creditor and the Corporate Debtor.
  - iv. The buyers of the goods, introduced by the Operational Creditor who would pay the Corporate Debtor and the Corporate Debtor in turn would set off the outstanding of Oxyzo.



- v. In addition, the Respondent was entitled to charge the site hiring charges, logistic charges and service fees.
- f) The entire transaction is evident from the following documents: -
- i. Clause 10 and 13 of the Master Facilities Agreement dated 29.03.2018 which clearly refers to a relation between Oxyzo and the Operational Creditor and permits Oxyzo to set off any credit balance and further allows Oxyzo to consider a default by the Operational Creditor towards a group entity of Oxyzo as an event of default under this agreement.
  - ii. Vide email dated 31.03.2018, SAIL has written to Mr. Abhishek Goyal of Respondent/Corporate Debtor to release immediate payment on account of the Operational Creditor for the first lot of goods worth Rs. 7.92 crores.
  - iii. A request for disbursement by Operational Creditor in favour of Oxyzo for a sum of Rs. 7.92 crores and for approximate Rs. 5.99 crores.
  - iv. Interest advice issued from time to time by Oxyzo upon the Operational Creditor.
  - v. Exchange of emails from 07.04.2018 to 18.04.2018, indicates that Oxyzo had to finance the goods from SAIL, the goods had to be kept as security with Respondent Corporate Debtor.
  - vi. Pursuant to the discussion held between the parties from 07.04.2018 to 18.04.2018<sup>7</sup> the Respondent/Corporate Debtor wrote to SAIL seeking to pick-up the entire material vide email dated 19.04.2018.
  - vii. The WhatsApp discussion between the parties 09.04.2018 to 27.06.2019 between the officials of the Respondent/Corporate Debtor and the officials namely Mr. Indermal, Pavaljeet Singh of the Operational Creditor and Oxyzo's representatives clearly evidencing the above nature of transaction.
  - viii. The flow of invoices from SAIL in favour of the Operational Creditor which shows that approx. 1145 MT has been sold by SAIL to Operational Creditor, the invoices from the Operational Creditor to the Respondent/Corporate Debtor and finally the sale by the Respondent/Corporate Debtor of the said goods to M/S. G.C. Sales, to



Rajesh Sales Corporation, and to M/s. BBJ through the Operational Creditor, and lastly, the invoices for site hiring, logistic and service fee clearly evidences the tripartite nature of the transaction.

- ix. The summary of sale conducted by the Respondent/Corporate Debtor to the 3 entities named above clearly shows that approx. 1145 MT of steel has been sold by the Respondent/Corporate Debtor for Rs. 6,31,23,757/- and the loss of Rs. 58,96,592/- has been booked due to price various. This is evident by comparing the columns titled as 'Buyer invoice value' and 'Supplier invoice value' in Annexure R-15.
- x. The reason for sale of the said goods was that the Operational Creditor had failed on its commitment to pay the outstanding dues of Oxyzo and accordingly the goods were sold to 3 parties at the instance of the Operational Creditor and the payments received from such sale were utilized to set off the dues of Oxyzo.
- g) When the Respondent/Corporate Debtor filed its reply the Operational Creditor in its rejoinder admits the relationship between the itself and Oxyzo, however, wrongfully denies the tripartite arrangement between the Operational Creditor, Oxyzo and the Respondent/Corporate Debtor.
- h) Additionally, the Operational Creditor filed an application for taking on record certain additional documents on 10.05.2023 whereby the outstanding of atleast Rs. 4.58 crores payable by the Operational Creditor to Oxyzo is admitted (Annexure-A22 at page 26 of the IA no. 2779/2023).
- i) The Operational Creditor has argued before the Adjudicating Authority that the alleged sale of goods took place towards the end of August, 2018 whereas the entry dated 29.12.2018 in the ledger filed by the OC in its petition clearly evidences that there was in fact an arrangement wherein the Respondent/Corporate Debtor sold off the goods to the parties introduced by the Operational Creditor and credit note was issued by the OC towards the loss incurred by the Respondent/Corporate Debtor because of the price variation.



- j) On careful perusal and comparison of the ledgers annexed by the Operational Creditor in the Demand Notice dated 13.02.2020 under Sec.8, IBC and the ledger annexed in the instant petition, it is clearly observed that these are two different ledgers wherein few entries are missing in the former ledger as well as amount shown to be transferred by the Respondent/Corporate Debtor in the two ledgers is also different. It is noteworthy that on receipt of Notice of Dispute dated 27.02.2020 issued by the Respondent/Corporate Debtor, the Operational Creditor manipulated the ledger to suit its convenience.
- k) Considering the facts and circumstances of the case herein before it is clear that the goods were not purchased by the Operational Creditor. The Respondent/Corporate Debtor was merely acting as a facilitator in the following manner:
- i. The Respondent/Corporate Debtor received the goods from SAIL on the instruction of the OC and Oxyzo.
  - ii. On OC's instructions, and as security for Oxyzo, the 'goods' were held in custody by the Respondent for disbursement to the clients/customers of the OC.
  - iii. The 'goods' were kept in the warehouse which were hired by the Respondent/Corporate Debtor for which the costs were solely to be borne by OC;
  - iv. The 'goods' were kept in the warehouse which were hired by the Respondent/Corporate Debtor for which the costs were solely to be borne by OC;
  - v. The invoices were raised by the OC on the Respondent/Corporate Debtor merely for logistical needs (as explained above);  
There are counter-invoices raised by the Respondent/Corporate Debtor on the OC and to the customers of/referred by the OC; few of which have been filed by the OC with the present application;
- l) The Operational Creditor relies upon 1 set of invoices to present a half-baked picture i.e. the Invoices between the Operational Creditor and the Respondent



Corporate Debtor suppressing other invoices. Hence, it is clear case of existence of dispute whereby the tripartite arrangement exists amongst the three parties and no buyer seller arrangement or relationship can be said to be existing between the Operational Creditor and Respondent/Corporate Debtor.

### **Analysis & Findings**

6. We have heard the Learned Counsels for the Operational Creditor, and further perused the averments made in the petition, reply filed by the Corporate Debtor, rejoinder filed by the Operational Creditor and written submissions presented by the Operational Creditor and the Corporate Debtor. Since the registered office of the respondent Corporate Debtor is in Delhi, this Tribunal is having territorial jurisdiction as the Adjudicating Authority in relation to prayer for initiation of Corporate Insolvency Resolution Process (CIRP) under Section 9 of The Insolvency and Bankruptcy Code, 2016, against the Corporate Debtor. Further, the present petition is filed within the period of limitation.
7. It is to be noted that the 'Operational Creditor' had sent a demand notice dated 13.02.2020 to the 'Corporate Debtor' under Section 8 of The Insolvency and Bankruptcy Code, 2016 for payment of outstanding dues worth Rs. 2,22,42,008 (Two Crore Twenty-two lakhs forty-two thousand eight) which includes principal amount of Rupees 1,63,54,418/- (One Crore Sixty-three lakhs fifty-four thousand four hundred eighteen) along with interest of Rs. 58,87,590 (Fifty-eight lakhs eighty-seven thousand five hundred ninety). Further, the present petition meets the pecuniary threshold limit of Rs. 1 Crore, as required under Section 4 of the Code.
8. **Innovations (P) Ltd. v. Kirusa Software (P) Ltd., (2018) 1 SCC 353** is to be taken into consideration. The said judgment makes it clear that in order to initiate CIRP proceedings under Section 9 of the Code, the Adjudicating Authority has to determine:



- a) Whether there is an 'Operational Debt' exceeding Rs. 1 Lakh (1 Crore, in case the petition is filed after 24.03.2020) as defined under Section 4 of the IBC?
  - b) Whether the documentary evidence furnished with the application shows that the aforesaid debt is due and payable and has not yet been paid?
  - c) Whether there is existence of a dispute between the parties or the record of the pendency of a suit or arbitration proceeding filed before the receipt of the demand notice if the unpaid operational debt in relation to such dispute?
9. In the first instance, to determine that whether the said amount claimed by the Operational Creditor would fall under the ambit of 'Operational Debt', it is pertinent to analyze the definition of 'Operational Debt' as mentioned under Section 5(21) of The Insolvency and Bankruptcy Code, 2016. Under said Section, the 'Operational Debt' is defined as:

*“A claim in respect of the provision of goods or services including employment or a debt in respect of the payment of dues arising under any law for the time being in force and payable to the Central Government, any State Government or any local authority”.*

While analyzing the present facts in the light of Section 5(21), the Operational Creditor and the Corporate Debtor had been into the business of Steel plates. The Corporate Debtor used to place the order for required supply of goods with the Operational Creditor from time to time and the Operational Creditor supplied the goods as per the order placed. It was asserted that the Corporate Debtor defaulted in making the payment to the Operational Creditor for which an action is preferred by the Operational Creditor before this Adjudicating Authority. The said Creditor claims the outstanding amount worth Rs.1,68,99,775/- (Rupees One Crore Sixty-Eight Lakh Ninety-Nine Thousand Seven hundred and Seventy-Five Only) from the Corporate Debtor. Furthermore, on the appreciation of the transactional invoices and the Ledger Account maintained by the Operational Creditor, as annexed by the Operational Creditor, and placed before us, we are of the view that



there has been a transaction between the said parties and that the Operational Creditor had supplied goods to the Corporate Debtor for which the Corporate Debtor has defaulted in making the payment. Also, the Corporate Debtor has not disputed the receipt of goods in question. Hence, this Adjudicating Authority is inclined to agree with the Operational Creditor that the debt claimed by the petitioner comes under the definition of 'Operational Debt' within the meaning of Section 5(21) of the Code.

10. It is observed that as per the requirement of Section 8(2)(a) of the Code, the Corporate Debtor is required to bring into notice of the Operational Creditor, the existence of any dispute within 10 days of the receipt of the demand notice. In the present case, the Corporate Debtor has filed reply dated 27.02.2020 to the demand notice dated 13.02.2020 sent by the Operational Creditor to the Corporate Debtor. It is observed that the Corporate Debtor in the said reply attempted to show that there is a 'Pre-existing dispute' between the parties which has arisen before the receipt of demand notice sent by the Operational Creditor to the Corporate Debtor.
11. In the instant case, the Corporate Debtor has raised an issue of pre-existing dispute claiming that there is a tripartite arrangement (among the Operational Creditor, the Corporate Debtor and Oxyzo) which exists amongst the parties. Therefore, it is pertinent to adjudicate upon the issue of dispute by this Adjudicating Authority as to whether there exists any 'Pre-Existing Dispute' as claimed by the Corporate Debtor.
12. In the judgment of **Mobilox Innovations Private Limited v. Kirusa Software Private Limited, (2018) 1 SCC 353**, the Hon'ble Supreme Court has held that *"an application under Section 9 of the Code is not maintainable and ought to be rejected on there being a "pre-existing dispute". The Supreme Court had held that 'so long as a dispute truly exists in fact and is not spurious, hypothetical or illusory, the Adjudicating Authority has to reject the application"*.



13. Ongoing through the records, it can be seen that the Corporate Debtor contends that the transactions with M/s Oxyzo Financial Services Pvt. Ltd, is a part of transaction between the Operational Creditor and Corporate Debtor in the instant application. However, the Corporate Debtor has not placed any supporting documents which evidences that the transaction between the Operational Creditor and the Corporate Debtor are the part of the transactions between the Operational Creditor and M/s Oxyzo Financial Services Pvt. Ltd. Moreover, the Master Facility Agreement between the Operational Creditor and M/s Oxyzo Financial Services Pvt. Ltd. has no mention of the Corporate Debtor of the instant case. Further, with respect to the contention of the Corporate Debtor that the goods purchased by the Operational Creditor from SAIL were kept as a security with the Corporate Debtor, in lieu of the Master Facility Agreement between the Operational Creditor and M/s Oxyzo Financial Services Pvt. Ltd., there is no such mention of the same in the Master Facility Agreement. Therefore, the contention of the Corporate Debtor, that the goods were not a part of transaction between the Operational Creditor and the Corporate Debtor, but was a security in lieu of the Master Facility Agreement, does not hold ground.
14. Further, in the case of transaction between the Operational Creditor and M/s Oxyzo Financial Services Pvt. Ltd., the loan was provided by the M/s Oxyzo Financial Services Pvt. Ltd. to the Operational Creditor, and there was no issuance of invoices in favor of Corporate Debtor or M/s Oxyzo Financial Services Pvt. Ltd. However, the transactions in the instant application relates to the purchase of goods by the Corporate Debtor from the Operational Creditor, for which the invoices were raised. The contention of the Corporate Debtor is that, the instant case does not have any Operational Debt, as the Corporate Debtor was merely acting as a facilitator in the “Purchase Finance Facility” which was entered between Operational Creditor and M/s Oxyzo Financial Services. However, there is no supporting documents to corroborate the same. Therefore, the defense of the Corporate Debtor with respect to pre-existing dispute appears to be a moon shine defense.



15. It is pertinent here to refer to the decision of Hon'ble Supreme Court in Re. **Mobilox Innovations Private Ltd vs Kirusa Software Private Ltd (2018) 1 SCC 353**, wherein, the Hon'ble Supreme Court was pleased to hold, inter alia, as follows:

*“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.”*

In the present case, mere contention by the Corporate Debtor as to existence of any dispute does not create a plausible belief as to existence of any ‘Pre-existing dispute’ between the Operational Creditor and the Corporate Debtor. Therefore, it would be safe to conclude that there does not exist any ‘Pre-existing dispute’ in the present case.

16. Therefore, in view of the transactional invoices accompanied with the Ledger Account maintained by the Operational Creditor, we are satisfied that there exists



a 'debt'. Furthermore, ledger account of the Operational Creditor signifies that there exists an Operational Debt and that the Corporate Debtor has defaulted in the payment of such debt. Hence, we are of the view that there is a debt due and payable and that there has been default on the part of the Corporate Debtor.

17. In view of the above facts and circumstances, we are satisfied that the present petition filed by the Operational Creditor fulfils the criteria laid down under the provisions of the Insolvency and Bankruptcy, Code. The Petition establishes that the Corporate Debtor is in default of a debt due and payable and that the default is more than the minimum amount stipulated under section 4 (1) of the Code, stipulated at the relevant point of time. In the light of the above facts and circumstances, it is, hereby ordered as follows: -

- a) The application bearing CP (IB) No. 387/ND/2021 filed by, Mr. Paveljeet Singh Ruppal, the Managing Director of M/s P & R Infraprojects Limited, the Operational Creditor, under Section 9 of the Code read with rule 6 of the Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016 for initiating CIRP against M/s OFB Tech Private Limited., the Corporate Debtor, stands admitted.
- b) The Applicant has proposed the name of Abhimanyu Mittal, registration number IBBI/IPA-001/IP-P-01870/2019-2020/12893, as the Interim Resolution Professional of the Corporate Debtor in Part-III of the application. Therefore, Mr. Abhimanyu Mittal, Registration Number IBBI/IPA-001/IP-P-01870/2019-2020/12893 Email: ca.mittalabhi@gmail.com is hereby appointed as Interim Resolution Professional (IRP) of the Corporate Debtor to carry out the functions as per the Code. The written communication in Form 2 as required under rule 9(1) of the Insolvency and Bankruptcy [Application to Adjudicating Authority] Rules, 2016 by the proposed Interim Resolution Professional is placed on record. It is pertinent to mention that the proposed IRP has a valid AFA.



- c) We direct the applicant to deposit a sum of Rs. 2 lacs with the Interim Resolution Professional, namely Mr. Abhimanyu Mittal to meet out the expense to perform the functions assigned to him in accordance with regulation 6 of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Person) Regulations, 2016. The needful shall be done within one week from the date of receipt of this order by the Operational Creditor. The amount, however, be subject to adjustment by the Committee of Creditors, as accounted for by Interim Resolution Professional, and shall be paid back to the Operational Creditor.
- d) We also declare moratorium in terms of Section 14 of the Code. The necessary consequences of imposing the moratorium flows from the provisions of Section 14 (1) (a), (b), (c) & (d) of the Code. Thus, the following prohibitions are imposed:

*“(a)The institution of suits or continuation of pending suits or proceedings against the corporate debtor including execution of any judgment, decree or order in any court of law, tribunal, arbitration panel or other authority;*

*(b)Transferring, encumbering, alienating or disposing of by the corporate debtor any of its assets or any legal right or beneficial interest therein;*

*(c)Any action to foreclose, recover or enforce any security interest created by the corporate debtor in respect of its property including any action under the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002;*

*(d)The recovery of any property by an owner or lessor, where such property is occupied by or in the possession of the corporate debtor.”*

*(e)The IB Code 2016 also prohibits Suspension or termination of any license, permit, registration, quota, concession, clearances or a similar grant or right given by the Central Government, State Government, local authority, sectoral regulator or any other authority constituted under any other law for the time being in force, on the grounds of insolvency, subject to the condition that there is no default in payment of current dues arising for the use or continuation of*



*the license, permit, registration, quota, concessions, clearances or a similar grant or right during the moratorium period.”*

- e) It is made clear that the provisions of moratorium shall not apply to transactions which are notified by the Central Government in exercise of power conferred on it in Section 14 Clause 3(a) of the Code, the supply of the essential goods or services to the Corporate Debtor as may be specified, are not to be terminated or suspended or interrupted during the moratorium period. In addition, as per the Insolvency and Bankruptcy Code (Amendment) Act, 2018 which has come into force w.e.f. 06.06.2018, the provisions of moratorium shall not apply to the surety in a contract of guarantee to the corporate debtor in terms of Section 14 (3) (b) of the Code.
- f) The Interim Resolution Professional shall perform all his functions contemplated, inter-alia, by Sections 15, 17, 18, 19, 20 & 21 of the Code and transact proceedings with utmost dedication, honesty and strictly in accordance with the provisions of the Code, Rules and Regulations. It is further made clear that all the personnel connected with the Corporate Debtor, its promoters or any other person associated with the Management of the Corporate Debtor are under legal obligation under Section 19 of the Code to extend every assistance and cooperation to the Interim Resolution Professional as may be required by him in managing the day-to-day affairs of the ‘Corporate Debtor’.
- g) In case there is any violation committed by the ex-management or any tainted/illegal transaction by ex-directors or anyone else, the Interim Resolution Professional would be at liberty to make appropriate application to this Tribunal with a prayer for passing an appropriate order. The Interim Resolution Professional shall be under duty to protect and preserve the value of the property of the ‘Corporate Debtor’ as a part of its obligation imposed by Section 20 of the Code and perform all his functions strictly in accordance with the provisions of the Code, Rules and Regulations.
- h) A copy of the order shall be communicated to the applicant, Corporate Debtor and IRP above named, by the Registry. In addition, a copy of the order shall also



be forwarded to IBBI for its records. Applicant is also directed to provide a copy of the complete paper book to the IRP. A copy of this order is also sent to the ROC for updating the Master Data. ROC shall send compliance report to the Registrar, NCLT.

Let copy of the order be served to the parties.

**Sd/-**  
**(RAHUL BHATAGAR)**  
**Member (Technical)**

**Sd/-**  
**(MAHENDRA KHANDELWAL)**  
**Member (Judicial)**