



**C.P.(IB) No.72/KB/2024**

**IN THE NATIONAL COMPANY LAW TRIBUNAL KOLKATA BENCH-II KOLKATA  
(BEFORE LABH SINGH, MEMBER (JUDICIAL) AND REKHA K SHAH, MEMBER  
(TECHNICAL))**

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Date of Hearing: 17.03.2025  
Date of Order: 21.5.2025**

**In the Matter of:**

Khaitan Winding Wire Private Limited

A Company within the meaning of the  
Companies Act 2013, having its registered  
Office at P-38, India Exchange Place,  
Kolkata-700001

APPLICANT/Operational CREDITOR

Versus

Truvolt Engineering Co. Pvt.  
Ltd, a Company within the  
Meaning of the Companies  
Act 2013, having its registered  
Office at Wellington Apartment,  
29/1, Nirmal Chandra Street  
4<sup>th</sup> Floor, Kolkata-700012  
Email: truvoltengg@gmail.com

CORPORATE DEBTOR

Coram: **Labh Singh Hon'ble Member (Judicial)**  
**Rekha K Shah Hon'ble Member (Technical)**

Present:

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For the applicant(s): Mr. Saunak Mitra Ld. Advocate  
For the respondent.: Mr. Vijay Nath Jha Ld. Advocate

**ORDER****Labh Singh Member(Judicial)**

1. This is an application filed by the applicant/operational creditor Khaitan Winding Wire Pvt. Ltd seeking initiation of CIRP against the Respondent Company/Corporate Debtor Truvolt Engineering Pvt Ltd (hereinafter to be referred as "Corporate Debtor"), under Section 9 of Code, 2016 for the alleged default on the part of the Corporate Debtor having an outstanding balance of Rs. 10,04,49,727.35/- (Rs. Ten Crores Four Lakh Forty Nine Thousands Seven Hundred Twenty Seven and Paisa Thirty Five Only) on account of supply of goods to the corporate debtor.
2. The details of transactions leading to the filing of this petition as averred by the applicant are as follows:
  - 2.1 The applicant Company, established in the year 1989, is engaged in the business of manufacturing of aluminium and copper wires and strips and supplied diverse grades of aluminium, copper wires and strips upon issuance of purchase orders by the Corporate Debtor as per terms of agreement/understanding dated 11<sup>th</sup> December 2017.

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- 2.2 The applicant had raised 55 invoices for such supply of goods on the corporate debtor detailed in column no. 7 of Part IV of the application. The goods supplied by the applicant, for which aforesaid invoices were raised, were unequivocally and unconditionally accepted by the Corporate Debtor without any demur which is evident from invoices accepted by the Corporate Debtor.
- 2.3 The applicant also raised 15 (fifteen) debit notes amounting to Rs. 1,30,218.19/- upon the Corporate Debtor in respect of interest against the post-dated cheques tendered by the Corporate Debtor particularly mentioned in column no. 8 of Part IV of the application.
- 2.4 As per part-IV of the application, after adjustment of sum of Rs. 20,96,296.15/-, an amount of Rs. 10,04,49,727.48/- which includes principal debt of Rs. 5,79,59,841.35/-, toward supply of goods along with accrued interest @15% per annum calculated from the 90 days from the date of supply, is still due and outstanding to be paid by the corporate debtor for the invoices raised by the applicant.
- 2.5 On 26<sup>th</sup> March 2021, the applicant issued Demand Notice u/s 8 of the IBC Code 2016 which was duly served at the registered office of the Corporate Debtor and on other known addresses of the Corporate Debtor. The applicant has filed an

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affidavit under Section 9(3)(b) stating that no payment or notice of dispute has been received by the applicant after service of demand Notice.

3. The respondent has filed its reply raising following objections:

3.1 The present petition is bad in law and not maintainable on facts as well as law. The Corporate Debtor disputes each and every averments and prayer of the present application.

3.2 On merit, it has been replied that the Corporate Debtor deals with manufacturing, sale and distribution of electric transformer and sub stations of various size and, deals with winder material which are used as raw material for manufacturing and accordingly, associated with the Operational Creditor since 2013. There are serious issues with regard to quality of winding materials since 2017 onwards but the Operational Creditor ignored and rejected complaints of the Corporate debtor. During the year 2018-19, the Operational Creditor supplied inferior quality of material which the Corporate Debtor unknowingly used for manufacturing of transformer for its customer which resulted in burnt of series of transformer on 18.9.2020 and another customer also raised issues and complaints.

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3.3 The customer of Corporate Debtor started demanding compensation for losses suffered by them and this fact was intimated to the Operational Creditor. The Corporate Debtor verbally demanded compensation from the Operational Creditor; however, despite regular verbale follow up, the Operation Creditor did not resolve the disputes/demands. Thereafter, the Corporate Debtor raised formal complaint vide letter dated 25.01.2021 raising demand for compensation and damages for inferior quality of winding material supplied by the Operational Creditor.

3.4 It has further been replied that the Corporate Debtor placed verbal orders as per usual practice for supply of fresh copper products and duly made an advance payment of Rs. 8 lakh on 24.02.2021 and another payment of Rs. 5 lakh on 25.02.2021 as mutually agreed. However, the Operation creditor did not supply the material; and hence, the Corporate Debtor was constrained to purchase the material from the open market at an inflated price. The applicant sent another complaint dated 26.3.2021. The applicant has suffered total loss of an amount of Rs.7,29,60,000/-

3.5 The Operational Creditor did not resolve the existing dispute on inferior quality of winding material supplied; and hence, the Corporate Debtor filed a money suit no.

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MS/134/2021 on 07.4.2021 before the Learned 10<sup>th</sup> Civil Judge Sr. Division at Alipore, South 24 Parganas.

3.6 The demand notice dated 26.3.2021 is untenable and not proper in law. The Corporate Debtor replied to said defective demand notice pointing out defects and pre-existing dispute. It was intimated that a money suit is pending between the parties. The Operational Creditor never corrected the defects nor proceeded for filing the petition under Section 9 of the IBC Code rather appeared in the money suit through its Director. The Operational Creditor filed its written statement in a money suit and made a counterclaim which was accepted by the Ld. Civil Court vide order dated 22.9.2022. Thereafter, the money suit was dismissed for default for non-appearance of the Corporate Debtor but the counterclaim proceeded upon application of Operational Creditor. Thereafter, the Operational Creditor sent an amended demand notice dated 30.11.2023 after a lapse of 979 days. Thereafter, another corrigendum notice dated 07.12.2023 was issued and thus Operational Creditor issued three demand notices under Section 8 of the IBC Code 2016.

3.7 That the operational Creditor submitted the record of default with NeSL(Information Utility) on 27.02.2024 after filing of the instant Company Petition on 13.02.2024 to

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which dispute has been authenticated by the Corporate debtor on 02.3.2024. The Corporate Debtor also issued another demand notice dated 27.02.2024 to which a reply intimating dispute was filed by the Corporate Debtor on 04.3.2024. Thus, there is a pre-existing dispute between the parties prior to issuance of demand notice dated 07.12.2023. Therefore, a prayer has been made for dismissal of the present petition.

4. The applicant has filed rejoinder to the reply of the corporate debtor reiterating the facts pleaded in the Company Petition and further submitted as follows:

4.1 It is submitted that the contents of the reply affidavit are untrue, incorrect and baseless. The Corporate Debtor has failed to either deny or dispute the purpose and content of tax invoices raised upon it by the Operational Creditor in lieu of supply of aluminium and copper wire alongwith strips. The Corporate Debtor, for the first time, raised a dispute for false bogey of inferior quality of goods vide letter dated 25.7.2021 for supply of goods. It is surprising that on one hand the issue of inferior quality is being raised and simultaneously, more order placed on the Operational Creditor for winding material.

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- 4.2 The Corporate Debtor has raised a claim for an amount of Rs. 7,29,60,000/- from Operational Creditor on the basis of purchase order dated 01.8.2013, 15.9.2013, 21.02.2018 and 10.5.2018. It is reiterated that claim of Operational Creditor in the instant petition is not related to or has any nexus with the said purchase orders.
- 4.3 It has further been stated that there were certain defects in demand notice dated 26.3.2021 and hence, the corrigendum notice dated 30.11.2023 was issued upon the Corporate Debtor. However, the said demand notice contains multiple copies of invoices as annexure and hence, such defect was rectified vide issuance of demand notice dated 07.12.2023. The purport of the demand notice dated 30.11.2023 and 07.12.2023 is the same. The money suit no. MS/134/2021 has no bearing on this petition and cannot be construed as a pre-existing dispute between the parties. The demand notice dated 27.02.2024 as claimed has been issued by NESL in Form-C and not by the operational Creditor.
- 4.4 There is no documentary proof that the strips used in the alleged burnt transformer were supplied by the Operational Creditor. The Corporate Debtor inspected all the copper wires and strips before taking the delivery. The Corporate

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Debtor raised issued for the first time vide letter dated 25.01.2021 i.e after 2 years of supply of goods.

4.5 Thus, while reiterating the facts pleaded in the petition and denying the averments made in the reply, a prayer has been made for allowing the present petition.

5. From pleading of the parties, perusal of all documents on record and after hearing Learned Counsel for the parties, the point which arises for our consideration is:-

*“Whether there is a pre-existing dispute between the parties as per Section 8(2) of the IBC Code 2016 at the time of issuance of demand notice and before filing of the present petition?”*

6. We have gone through the pleadings of the parties and documents placed on record by the parties and heard the arguments put forth by learned Counsels for the parties; and after hearing the learned counsels for the parties, we shall now proceed to consider the present petition on its merits, specifically within the ambit of point involved in the instant application.

7. It is a specific case of the applicant that on 26<sup>th</sup> March 2021, it issued Demand Notice u/s 8 of the IBC Code 2016 which was duly served at the registered office of the Corporate Debtor and on other known addresses of the

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Corporate Debtor. It is contention of the Corporate Debtor that the demand notice dated 26.3.2021 was defective. The defects were pointed out to Operational Creditor and the Operational Creditor was made aware about a pre-existing dispute between the parties.

8. The provision of Section 8 of the IBC Code 2016 provides for issuance of demand notice before filing of petition under Section 9 of the IBC Code 2016. In this regard, it would be pertinent to refer the provision of Section 8 of the IBC Code 2016 which is as under:

Section 8 of the IBC Code 2016:

*(1) An operational creditor may, on the occurrence of a default, deliver a demand notice of unpaid operational debtor copy of an invoice demanding payment of the amount involved in the default to the corporate debtor in such form and manner as may be prescribed.*

*(2) The corporate debtor shall, within a period of ten days of the receipt of the demand notice or copy of the invoice mentioned in sub-section (1) bring to the notice of the operational creditor*

*(a) existence of a dispute, if any, or record of the pendency of the suit or arbitration proceedings filed*

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*before the receipt of such notice or invoice in relation to such dispute;*

*(b) the payment of unpaid operational debt*

*(i) by sending an attested copy of the record of electronic transfer of the unpaid amount from the bank account of the corporate debtor; or*

*(ii) by sending an attested copy of record that the operational creditor has encashed a cheque issued by the corporate debtor.*

*Explanation.-For the purposes of this section, a "demand notice" means a notice served by an operational creditor to the corporate debtor demanding payment of the operational debt in respect of which the default has occurred.*

9. Thus, it is clear from provision of Section 8 of the IBC Code 2016 that the operational creditor has to deliver a demand notice of unpaid operational debt in respect of which default has occurred alongwith copy of an invoice demanding payment of the amount involved in the default to the corporate debtor.
10. It is an admitted case of the applicant that demand notice dated 26.03.2021 was defective in as much as date of default, the amount of default reflected therein, and the

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claim not supported with documentary proof. Thus, the defects were material one and not formal which could be justified by issuance of corrigendum to demand notice. It is crystal clear that IBC Code 2016 does not provide for issuance of corrigendum or amendments to such demand notices with material defects which goes to the root of the matter. There was no bar for the Operational Creditor to issue fresh demand notice after curing the defects pointed out by the Corporate Debtor; however, the Operational Creditor opted to issue corrigendum demand notice for reasons best known to its Directors.

11. The matter does end there rather the Operational Creditor/Applicant issued multiple demand notices which are demand notice dated 26.3.2021, corrigendum demand notice dated 30.11.2023 and another corrigendum demand notice dated 07.12.2023. Thus, multiple demand notices have been issued by the applicant/Operational Creditor to the Corporate Debtor.
12. On the aspect of issuance of multiple demand notices, a Coordinate Bench of this Tribunal in case of Ultratech Cement Ltd Vs. Universal Journeys(India) Pvt. Ltd & Ors (2023) ibclaw.in 420 NCLT held as follow:

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*“We find that the Operational Creditor issued multiple demand notices to the Corporate Debtor which is not acceptable. The IBC, 2016 is a procedural Code and the process stipulated therein needs to be followed in the letter and spirit. There is no such provision in the IBC, 2016 and in the Regulation made thereunder that allows the Operational Creditor to issue multiple demand notices to the Corporate Debtor. Hence, we are of the view that the multiple demand notices are beyond the ambit of the IBC, 2016”.*

13. The next question arises whether there is an existence of dispute between the parties before issuance of demand notice under Section 8 of the IBC Code 2016 and; a suit was pending between the parties before a competent court of law. It is settled law that the dispute, if any, should exist before receipt of demand notice. The pending suit or arbitration proceedings should be filed or pending before the receipt of such notice or invoice in relation to such dispute.
14. It is further an admitted fact in this case that the Corporate Debtor had filed a money suit no. MS/134/2021 on 07.4.2021 before the Learned 10<sup>th</sup> Civil Judge Sr. Division at Alipore, South 24 Parganas. The Operational Creditor has appeared and filed its written statement with counter claim

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which was accepted by the Ld. Civil Court vide order dated 22.9.2022. This is the reason which compelled the Operational Creditor to issue corrigendum demand notice instead of issuance of fresh demand notice and more important after expiry of more than 2 years i.e on 30.11.2023 after a lapse of 979 days.

15. Moreover, it is further admitted case of the Operational Creditor that it submitted the record of default with NeSL(Information Utility) on 27.02.2024 after filing of the instant Company Petition on 13.02.2024 to which dispute has been authenticated by the Corporate debtor on 02.3.2024. When a debtor disputes the default claim, the NeSL IU updates the authentication status to "Disputed". This indicates that the debt is not undisputed and that the Adjudicating Authority must investigate the matter.
16. A question arose before Hon'ble Supreme Court of India in case of Mobilox Innovative Private Limited v. Kirusa Software Private Limited, (2018) 1 SCC 353 as to whether an application filed under Section 9 of the IBC Code otherwise complete can be rejected if notice of dispute has been received by the Operational Creditor or there is a record of dispute with Information Utility. Hon'ble Supreme Court observed as follow:

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*“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 required 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,”*

17. The said law laid down by Hon’ble Supreme Court was later on affirmed in case of Kay Bouvet Engg. Ltd. v. Overseas Infrastructure Alliance (India) Pvt. Ltd. [LLR 2021 SC 370] wherein Hon’ble Apex Court held that

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*“Once the operational creditor has filed an application which is otherwise complete, the adjudicating authority has to reject the application under Section 9(5)(ii)(d) of the Code, if a notice has been received by the operational creditor or if there is a record of dispute in the information utility. What is required is that the notice by the corporate debtor must bring to the notice of the operational creditor the existence of a dispute or the fact that a suit or arbitration proceedings relating to a dispute is pending between the parties. All that the adjudicating authority is required 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”.*

18. Hon’ble NCLAT in case of Amrop India Pvt Ltd V The Hitech Gears Ltd NCLAT (2023) ibclaw.in 663, held that:

*‘For a pre-existing dispute, to be a ground to nullify the application filed under Section 9 of IBC, dispute must be truly existing at the time of filing a reply to the demand notice as contemplated under Section 8(2) of*



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*IBC or at the time of filing the Section 9 application”.*

19. Therefore, in the light of our aforesaid observation and law applicable thereon, this Tribunal holds that the instant Company Petition filed under Section 9 of IBC Code 2016 is not maintainable as there is existence of dispute between the parties before filing of the instant application and deserves to be dismissed being devoid of merits. Accordingly, the present petition is dismissed being not maintainable and devoid of merits.
20. It is made clear that in view of our finding on issue of pre-existing dispute between the parties in term of Section 8(2) of the IBC Code 2016, this order of ours will not come in the way of any other legal remedies for the recovery of the debt if so advised, and the respondent is free to pursue all modes of recovery permissible and maintainable at law.

Rekha Kantilal Shah  
Member(Technical)

Labh Singh  
Member(Judicial)