NATIONAL COMPANY LAW APPELLATE TRIBUNAL,
PRINCIPAL BENCH, NEW DELHI

Company Appeal (AT) (Insolvency) No. 1353 of 2023

[Arising out of Order dated 18.09.2023 passed by the Adjudicating Authority (National Company Law Tribunal), New Delhi Bench (Court-II) in Company Petition No. (IB)-556(ND)2020]

IN THE MATTER OF:

Puneet Kumar **...Appellant**
Suspended Board of Director of
NYSA Communications Pvt. Ltd

Versus

Computer Junction Pvt. Ltd. & Anr. **...Respondents**

Present:

For Appellant:	Ms. Pooja Saigal Sr. Advocate with Mr. Milan Singh Negi, Mr. Nikhil Kumar Jha, Mr. Nivesh Dixit and Ms. Ananya Choudhary, Advocates.
For Respondents:	Mr. Tushar Thareja, Advocate for R1.

J U D G M E N T
(14th October, 2025)

Ashok Bhushan, J.

This Appeal by a Suspended Director of the Corporate Debtor has been filed challenging the order dated 18.09.2023 passed by the Adjudicating Authority (National Company Law Tribunal) New Delhi Bench (Court-II) admitting Section 9 application filed by M/s. Computer Junction Private Limited (Operational Creditor) Respondent No.1 herein. By the impugned order, the Adjudicating Authority has admitted Section

9 application. Appeal was heard by this Tribunal and interim order was passed on 12.10.2023.

2. Brief facts of the case necessary to be noticed for deciding the Appeal are:-

2.1. The Corporate Debtor is into the business of online / offline examination services. Indian Council of Agricultural Research ('ICAR') issued e-tender for conducting online AIEE for admission to UG, PG and Ph.D. courses including invitation of online application, online computer-based test, online counselling etc. by tender notice dated 23.03.2018. The Corporate Debtor submitted its technical and financial bids online which was accepted by the ICAR vide letter dated 09.05.2018. For executing the assignment, Corporate Debtor entered into an agreement with the Operational Creditor w.e.f. 25.05.2018 which identifying the role, responsibilities, services and duties of the parties. The Operational Creditor under the agreement was service provider to the Corporate Debtor for conduct of online AIEE test. Examination was conducted on 22nd and 23rd June, 2018. On 26.06.2018, ICAR sent an e-mail to the Corporate Debtor asking for urgent report with respect to aforesaid exams, including the CCTV footage of the examination venues at few centers. Corporate Debtor discussed the matter in relation to communication of CCTV Surveillance data and requested the Operational Creditor and its partner Testpan to provide necessary CCTV footage. On 26.06.2018, Testpan wrote back to the Corporate Debtor with information to Operational Creditor assuring that no venue will delete the CCTV Footage unless and until the clearance of receiving is done from Corporate Debtor. ICAR on 29.06.2018 again wrote to the Corporate Debtor seeking CCTV Footage of examination centers at 27 cities. Corporate Debtor again wrote to Operational Creditor on 29.06.2018 and Testpan to seek CCTV recordings which was not provided till date. Corporate Debtor informed the Testpan that CCTV at one of the location is deleted and not available. On 03.07.2018, ICAR again sent an e-mail seeking CCTV Footage in light of the allegations of mass copying at certain centres. Some reports were submitted by ICAR with respect to CCTV Footages issued where non-availability of CCTV cameras at certain locations was highlighted. On 05.07.2018, Corporate Debtor again wrote to Testpan (partner of the Operational Creditor) that CCTV at couple of locations is deleted and not made available. Corporate Debtor engaged third party agency (Stellar) for inspection / retrieval of data from the HDD where the Operational Creditor and its partner Testpan claimed to have the Data. Stellar sent a report that data was over written and could not be retrieved. Emails were sent by the Corporate Debtor on 18.07.2018 and thereafter to try to retrieve the recording of the locations where the tests were conducted. On 30.07.2018, ICAR terminates the contract of the Corporate Debtor. Invoices were sent by the Operational Creditor to the Corporate Debtor for payment. There have been e-mails exchanged between the parties with respect to amount. The Corporate Debtor's e-mail dated 01.08.2018 was sent for an amount of Rs.3,75,83,000/-. A demand notice was issued by the Operational Creditor dated 23.12.2019 claiming total amount of Rs.3,54,54,483/- as operational debt. Demand notice was replied by Corporate

Debtor by letter dated 15.01.2020. The Corporate Debtor in its reply claimed that the Operational Creditor failed to provide end to end services to the Corporate Debtor as per the Facility Agreement dated 30.05.2018. At various centres adequate infrastructure including CCTV and other surveillance devices were not provided due to which Corporate Debtor was unable to contradict the allegation of mass copying at various centres and the contract was terminated by ICAR. Dispute and differences were communicated to the Operational Creditor. It was pleaded that there being pre-existing dispute between the parties, the demand is denied. The Operational Creditor filed Section 9 application claiming an operational debt and default. A counter affidavit to Section 9 application was filed by the Corporate Debtor giving details of Facility Agreement, award to contract by ICAR to conduct AIEE examination for admission to UG, PG and Ph.D. courses. The details regarding complaints received from ICAR and the correspondences with Corporate Debtor and its partner Testpan were highlighted and relevant materials were brought on the record in the counter affidavit claiming that the Operational Creditor failed to provide necessary services and there was quality issue. Section 9 application was admitted on 13.10.2021 by the Adjudicating Authority which order was set aside by this Tribunal on 09.05.2022 remitting the matter for fresh consideration. This Tribunal also noted the submission on behalf of the Corporate Debtor that there is pre-existing dispute and judgment of the Hon'ble Supreme Court in ***"Mobilox Innovations Private Limited versus Kirusa Software Private Limited- (2018) 1 SCC 353"*** was relied. After the remand, the Adjudicating Authority by the impugned order has admitted Section 9 application aggrieved by which order this Appeal has been filed.

3. We have heard Learned Counsel for the Appellant as well as Learned Counsel for the Respondent.

4. Learned Counsel for the Appellant submits that pre-existing dispute between the parties with regard to conduct of examination and services provided by Operational Creditor and its partner were in existence which were supported by necessary documents filed by the Corporate Debtor in its reply. There was issue regarding quality of service and deficiency in services by the Operational Creditor, the amount was not payable. It is submitted that on account of quality issue and other issues, the invoices for Rs.3,75,83,000/- was reduced to Rs.1,13,30,756/-. It is submitted that notice of dispute having been issued by the Corporate Debtor after receiving the demand notice with relevant details and materials pointing out pre-existing dispute, Adjudicating Authority ought not to have admitted Section 9 application. Reliance of Adjudicating Authority on the ledger of the Corporate Debtor that it is showing balance of more than Rs.4,00,000/-, hence, it being more than threshold of Rs.1 lakh, application need to be admitted is erroneous. There was no case set up by the Operational Creditor of any amount of Rs.4 lakhs due and payable. The Adjudicating Authority proceeded to adjudicate the merits of the dispute raised by the Operational Creditor. It is submitted that the material evidences on the record proving deficiencies and shortcomings overlooked. It was on the

record that the ICAR has demanded CCTV Footage with respect to centers were examination was conducted. Operational Creditor and its partner failed to provide CCTV Footage of all the centres.

5. Counsel appearing for the Respondent refuting the submissions of the Appellant submits that it was the responsibility of the Corporate Debtor to provide for DVR facilities and the manpower. As per the Facility Agreement, responsibility for CCTV Surveillance recording vested solely with the Corporate Debtor. Corporate Debtor was specifically required to provide hard disks and pen drives. There being undisputed debt or more than Rs.1 lakh, Adjudicating Authority rightly admitted Section 9 application. The Corporate Debtor in its reply to demand notice as well as in reply to Section 9 application sought to raise moonshine dispute. Corporate Debtor before the Ministry of Agriculture, Government of India has categorically stated that the examination was conducted in accordance with terms and there were no deficiencies in services. Corporate Debtor having taken stand before the Government that examination is successfully conducted, it cannot put any blame on the Operational Creditor and its partner. Representation dated 08.12.2018 sent by the Corporate Debtor to Ministry of Agriculture, Government of India has been referred to. The case of the Appellant that invoice dated 10.08.2018 Rs. 3,75,83,000/- reduced to Rs. 1,13,30,735/- is incorrect. Copy of invoices sent by the Operational Creditor does not record any reduction. Corporate Debtor has initiated Arbitration proceedings against the ICAR for recovery of its dues. Adjudicating Authority rightly admitted Section 9 application.

6. We have considered the submissions of the parties and perused the record.

7. It is admitted fact that the parties entered into Facility Agreement dated 30.05.2018 w.e.f. 25.05.2018 which outlines the scope of work of the Operational Creditor who was referred to as service provider in the Agreement. The Operational Creditor through partner Testpan India Pvt. Ltd. under Clause 2(V) was entrusted following responsibilities:-

> *"V. DVR Facility for recording the exam proceedings at each lab along with cameras and NYSA designated manpower will be responsible to take backup of these location, in server or any other medium provided by Nysa."*

8. The storage of device of CCTV Surveillance recording to be arranged by Corporate Debtor. The Corporate Debtor was awarded contract for conduct of AIEE examination by the ICAR which was conducted on 22nd June and 23rd June, 2018. On 26.06.2018, ICAR sent an e-mail to the Corporate Debtor asking for various reports including following:-

> *"8. In addition to above, you are also requested to provide the cctv footage of the examination venues at Bangalore, Guwahati, Cuttak, Dhanwad, Chapra and Delhi recorded during the examination. For rest of the centres, the same may be provided in due course."*

9. The Operational Creditor and its partner were informed about the CCTV data requirement. The partner of the Operational Creditor sent an e-mail on 26.06.2018 at 7:20 PM to the Corporate Debtor which is to the following effect:-

> *"Dear Sir*
>
> *We have assured that no venue will delete the CC TV footage unless and until the clearance of receiving the same is done from your end.*
> *We had categorically mentioned that the manpower should collect the same in servers that they had taken to conduct the exam. This message was not cleared to all the manpower wherever you have hired the manpower from.*
> *Now most of the venues have confirmed that they have given (still the status has to be provided by you), now please arrange the pen drives or HDD so that venues can give the footage in those depending on size and accordingly logistic to be arranged.*
> *Please take necessary action, our venue will support you for same.*
>
> *Regards,*
> *for TESTPAN India Pvt Ltd,*
>
> *Rajesh Setia*
> *Director"*

10. The CCTV Footage with respect to certain examinations centres was not provided. ICAR again asked the relevant CCTV Footage. ICAR informed that

CCTV Footage was not provided and once again Corporate Debtor was requested on 03.07.2018 which is as follows:-

> *"Dear Sirs,*
> *Vide trail mail the Firm was asked to provide the CCTV footage of 26 Examination City Centres where alleged mass copying taken place where as you have provided the CCTV footage for only seven examination city centres. There were total 35 examination venues at Delhi Examination City Centre out of that only for 16 venues CCTV footage were provided on 02.07.2018 and seen by the Agril. Edn. Division officials. The logic given by the Firm that the complete CCTV footage for all the centres would be possible to provide by 10th July, 2018 as they are in transit is not very convincing because even for all the Delhi venues, adg the CCTV footage have not been provided. Once again you are requested to provide the CCTV footage of the remaining examination city centres without any further delay so that same can be seen by the committee to arrive at the decision on alleged mass copying/cheating at these centres.*
> *Quoted text hidden]*
> *M.K. Agnihotri*
> *Controller of Examinations (Agril. Edn.)*
> *ICAR, KAB-II, Pusa, New Delhi-12*
> *Ph.: 011-25840746*
> *Fax: 011-25843329"*

11. As noted above, the Corporate Debtor has engaged a third party Stellar for retrieving the data who informed the Corporate Debtor that data was over written and ultimately the contract awarded to the Corporate Debtor was cancelled on 30.07.2018 by the ICAR. A demand notice was issued by the Operational Creditor to the Corporate Debtor dated 23.12.2019 of principal amount of Rs.2,65,77,028/-. Demand notice was replied by the Corporate Debtor on 15.01.2020. Demand notice was denied. Details of contract given by ICAR for conduct of examination on 22nd and 23rd June, 2018 have been detailed. Details of Facility Agreement dated 30.05.2018 entered with Operational Creditor. In reply notice, in paragraphs 8 to 12, following has been pleaded:-

> *"8. That on 30.05.2018, an "Facilities Agreement" was entered into between 'my Client' and you the addressee's client, for 'my Clients' requirement for end to end infrastructure support and laptops servers to be used during the conduction of the aforesaid examination. That as per Clause 1, your client was under the obligation as per the contract to provide "laptops servers 1 primary and 1 backup to be provided on average ratio of 160 candidates that is to 1000+1000 for 1.60 lacs candidates (proportionate increase for increase in candidate count) rental server laptops configuration: (HP, DELL Lenovo) core i5 or equivalent, 8GB RAM, 250 GB or above HDD and laptop". That as per Clause 2 your client was also under the obligation to provide end to end support qua*

"activities including booking and facilities of examination center":

9. That from the very beginning you the addressee's client, miserably failed to discharge its obligation(s) under the contract and failed to provide end to end services to 'my Client'. That your client was duty bound to provide the details of all the examination centres as per the deadline, resulting into the delay in issuance of admit cards to the candidates who had applied for the aforesaid examination. That State wise data was provided by 'my Client' to you the addressee's client in advance for number of examination centres to be provided State wise, but you the addressee's client miserably failed to provide the adequate centres on time, resulting into poor attendance of candidates from the States of Kerala, Manipur, Meghalaya, etc. That further in certain centres where your client was obliged to provide adequate infrastructure for the candidates, the details of which was already shared in advance to your client, your client failed to make adequate arrangements, leading to utter chaos at the centres, resulting into cancelation of examination at various centres.

10. That further due to not providing of adequate infrastructures at various centres like CCTV cameras and other surveillance devises at the centre, 'my Client' was not able to contradict the allegation of mass copying at various centres due to the failure of you the addressees client to provide the recorded CCTV footage of the relevant examination centres, due to which ICAR by virtue of its letter dated 30.07.2018, terminated the

> *contract as executed between 'my Client' and ICAR resulting into exemplary losses to 'my Client'.*
>
> *11. That all the aforesaid disputes and differences were well conveyed to you by virtue of 'my Client's' emails dated 15.06.2018 and 16.06.2018, by virtue of which the delay in issuance of admit cards were brought on record due to failure of your client to provide the details of the examination centres on time; email dated 29.06.2018, thereby asking your client to provide CCTV recording for certain centres for the examinations conducted on 22.06.2018; email dated 05.07.2018 thereby putting your client to notice to recover the CCTV recording qua certain centres in which the recording was found to be deleted.*
>
> *12. That all the aforesaid emails clearly bring on record the existence of disputes, between 'my Client' and you the addressee's client for its failure to discharge its obligations under the contract which had so resulted into the termination of the contract of 'my Client'."*

12. The reply to demand notice, thus, clearly raised issue of deficiencies in services resulting in termination of contract by ICAR on 30.07.2018. Existence of dispute between the Corporate Debtor and Operational Creditor was specifically pleaded. The Corporate Debtor has disputed the invoices and denied any claim.

13. The first question which need to be considered is as to whether there was any pre-existing dispute between the parties which is relevant factor for passing an order under Section 9 of the application. We may refer to the

judgment of the Hon'ble Supreme Court in ***"Mobilox Innovations Private Limited"*** (supra). The Hon'ble Supreme Court had occasion to consider the scheme under Sections 8 and 9 of the IBC and after noticing the scheme, in paragraph 34, following has been observed:-

> *"**34.** Therefore, the adjudicating authority, when examining an application under Section 9 of the Act will have to determine:*
>
> *(i) Whether there is an "operational debt" as defined exceeding Rs 1 lakh? (See Section 4 of the Act)*
>
> *(ii) Whether the documentary evidence furnished with the application shows that the aforesaid debt is due and payable and has not yet been paid? and*
>
> *(iii) Whether there is existence of a dispute between the parties or the record of the pendency of a suit or arbitration proceeding filed before the receipt of the demand notice of the unpaid operational debt in relation to such dispute?*
>
> *If any one of the aforesaid conditions is lacking, the application would have to be rejected. Apart from the above, the adjudicating authority must follow the mandate of Section 9, as outlined above, and in particular the mandate of Section 9(5) of the Act, and admit or reject the application, as the case may be, depending upon the factors mentioned in Section 9(5) of the Act."*

14. Notice of dispute has also been dealt in paragraph 51. In paragraph 51 of the judgment, following has been held:-

> *“**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)(i)(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.”*

15. The present is a case where notice of dispute was issued by the Corporate Debtor. Submission which has been raised by Counsel for the Respondent is that the dispute raised by the Corporate Debtor is a moonshine dispute. The test for finding out existence of dispute itself has been clearly laid down by the Hon’ble Supreme Court in paragraph 51 of the judgment where it

was held 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. Present is a case where Facility Agreement between the Corporate Debtor and the Operational Creditor was entered on 30.05.2021 for conduct of the examination entrusted to the Corporate Debtor by the ICAR. There was allegation regarding mass copying in the examination due to which ICAR has asked the Corporate Debtor to provide CCTV Footage. There has been a correspondence at relevant time in June 2018 itself (examination was conducted on 22nd and 23rd June, 2018). Corporate Debtor has asked the Operational Creditor and its partner Testpan to provide CCTV Footage. Correspondences at the relevant time between the parties Corporate Debtor and the Operational Creditor was brought on the record which indicate that ICAR has written to the Corporate Debtor even on 03.07.2018 that CCTV Footage was asked to provide. has not been provided. CCTV Footages were missing on certain centres. Corporate Debtor has appointed third party Stellar to retrieve the data who could not retrieve the data which was also informed the Operational Creditor and its partner on 18.07.2018 by the Corporate Debtor. The Testpan, partner of Operational Creditor could not provide for data, thus, the dispute which has been raised by the Corporate Debtor was based on evidence on record. The invoice which has been raised by the Operational Creditor where on the strength of Facility Agreement entered with the Corporate Debtor on 30.05.2021 with respect to conduct of examination providing services for conduct of examination, issues between the parties was flagged immediately after examination. Corporate Debtor in its reply to Section 9 application has pleaded and brought relevant correspondences between the parties and it is useful to notice paragraph 8 to 18 of the reply of the Corporate Debtor, which pleading supported by relevant correspondences which were on the record:-

> *"8. As per the said agreement, the Applicant also agreed to provide CCTV and DVR facility for recording the exam proceedings at each exam center, while the Corporate Debtor was to take backup from such DVR after completion of exam. As per clause 2 of the said agreement, the Applicant agreed to make all the arrangements along with one of its associate/partners, namely Testpan India Pvt. Ltd. ('Testpan').*
>
> *9. Thereafter on 22.06.2018, exams were conducted by ICAR at respective centers whereby the Applicant along with its partner, Testpan, had undertaken to provide all the requisites as agreed under the said agreement.*
> *After completion of examination, on 26.06.2018 (at 11:29 AM), ICAR wrote to the corporate debtor to provide backup of CCTV footage among other things.*
>
> *On 26.06.2018 (at 01:06 PM), the corporate debtor, pursuant to telephonic discussion, wrote to the Applicant and its partner Testpan that the corporate debtor shall collect the CCTV footage/ surveillance data from the examination centres in storage devices (of the corporate debtor).*

On 26.06.2018 (at 07:20 PM), Testpan (partner of Applicant) wrote to the corporate debtor and the Applicant that the corporate debtor shall rest assured that CCTV footage shall not be deleted from any centre/ venue unless any instruction is received from the corporate debtor. Also, Testpan writes in the said email that all the centres/ venues shall provide CCTV footage to the corporate debtor's manpower in HDD/pen drives. Copy of emails dated 26.06.2018 exchanged between ICAR, corporate debtor, Applicant and Testpan are annexed herewith and collectively marked as ANNEXURE R-2 (COLLY)

10. The above set of emails/ communication exchanged between the parties clearly explains the arrangement between the parties, which was very clear that the Applicant and its partner Testpan was to provide CCTV cameras and DVR for recording, while the corporate debtor was to arrange back-up device for taking CCTV footage from each centre.

11. A perusal of emails dated 30.06.2018, 05.07.2018 and 09.07.2018 (annexed with appeal) shows that the CCTV footage of certain centers were either deleted or not provided by the Applicant.

12. Further, a herculean attempt was made by corporate debtor to recover the deleted footage. In this regard, the corporate debtor also took services from Stellar Information Technology Pvt. Ltd. ('Stellar'), who is a well-recognized data recovery agency.

13. The corporate debtor had several rounds of discussions and communications with Stellar on recovery of deleted CCTV footage, however, even stellar could not recover the CCTV footage for the reason "data overwritten". In this regard, emails dated 11.07.2018, 14.07.2018, 16.07.2018 and 17.07.2018 were exchanged between the corporate debtor and Stelar. Copy of emails dated 11.07.2018, 14.07.2018, 16.07.2018 and 17.07.2018 exchanged between the corporate debtor and Stelar are annexed herewith and collectively marked as ANNEXURE R-3(COLLY).

14. As the data was not recoverable and Stellar (on 17.07.2018) had informed the same, the corporate debtor informed the same to the Applicant and its partner Testpan on 18.07.2018. In response to the said email, Testpan, on 19.07.2018, forwarded the issue to its state partner at Chennai to make attempt to recover the data, who had given the concerned venue to Testpan and had brought the DVR from Chennai to Noida for backup.

In furtherance of this, the partner of Testpan, on 19.07.2018, requested corporate debtor to send the DVR and HDD so to enable them to try recovering the data. As no response was received from the Applicant, or Testpan or its partner in Chennai, on 03.08.2018, the corporate debtor wrote to the said parties that despite giving the requisite devices, no response was received, even Testpan's partner in Chennai was taking the corporate debtor's phone call.

In response to the said email of the corporate debtor, Testpan, on 04.08.2018, sought explanation from its partner, however, no response was received. Copy of emails dated 18.07.2018, 19.07.2018, 20.07.2018, 03.08.2018 and 04.08.2018 exchange between the parties are annexed herewith and collectively marked as ANNEXURE A-4 COLLY.

15. It is noteworthy that despite efforts from the corporate debtor and due acknowledgment of the Applicant, its partner Testpan and Testpan's partner in Chennai, the CCTV Footage could not be recovered and in the interregnum, on 30.07.2018, ICAR terminated the contract with the corporate debtor.

16. On 03.07.2018, ICAR informed the corporate debtor that despite repeated reminders, CCTV footage of all examination centres was not provided. In the said email ICAR raised all its concerns and again requested the corporate debtor to provide the CCTV footage forthwith.

17. Also, in view of non-receipt of CCTV footage and to assist the committee formed to look into the issue of mass copying, the All India Agricultural Students Association ('AIASA') submitted its report in respect of CCTV were not even installed in certain centres. Needless to say, if there were no CCTV camera installed, the question of recording of the footage does not arise at all. The Applicant alongwith its partner Testpan were making frivolous attempt to recover the

CCTV footage, which was actually never even captured. Copy of email dated 03.07.2018 alongwith letter dated 11.07.2018 written by AIASA and its report is annexed herewith and collectively marked as ANNEXURE R-5(COLLY).

18. The Applicant herein therefore completely failed to observe any of its obligations under the said Facility Agreement, such deficient services at the end of the Applicant and its partner, Testpan, led to issuance of contact termination letter dated 30.07.2018 by ICAR. Copy of contract termination letter dated 30.07.2018 issued by ICAR is annexed herewith and marked as ANNEXURE -R-6."

16. Thus, the present is a case where issues pertaining to deficiency in services provided by Operational Creditor were on the record. The Adjudicating Authority in the impugned order noted the submission of the Corporate Debtor regarding Operational Creditor not been able to provide CCTV Footage which was required by ICAR and the Adjudicating Authority also noticed various e-mails, correspondences between the Corporate Debtor, Operational Creditor and the ICAR. The Adjudicating Authority, however, observed that under the Facility Agreement, the Corporate Debtor was responsible for taking back up of the DVR on the location. The Adjudicating Authority after noticing the various correspondences has entered into the dispute between the parties and proceeded to examine the same and gives its opinion which is not remit Adjudicating Authority. The Adjudicating Authority was only to look into as to

whether notice of dispute has been issued by the Corporate Debtor and as to whether the defence taken by the Corporate Debtor is moonshine defence and not supported by any evidence. Dispute itself has been noticed by the Adjudicating Authority in its judgment which is apparent from correspondences in relevant time. However, Adjudicating Authority recorded the finding that under the Facility Agreement, it was the Corporate Debtor who was responsible for taking the backup of the CCTV Footage through its manpower. It is further relief that on the representation of the Corporate Debtor to the Minister of Agriculture where Corporate Debtor stated that examination was successfully conducted. It is useful to notice paragraphs 18 and 19 of the impugned order, which is as follows:-

> *"18. Moreover, during the course of the hearing, the Applicant had contended that the Respondent itself vide its letter dated 19.11.2018 addressed to the Hon'ble Minister of Agriculture, Government of India has specifically stated in para 10 (page 38 of the rejoinder) "That the aforesaid online examination was so conducted successfully to the satisfaction of the observers so appointed by ICAR at the aforesaid centers and to the satisfaction of the candidates."*
>
> *19. From the conjoint reading of the documents (ibid) relied upon by the Applicant, it is observed that in terms of the Facility Agreement dated 30.05.2018, the Respondent was responsible for taking the backup of the CCTV Footage through its manpower. Further, we find that as per its own statement made by the*

> *Respondent in its letter dated 19.11.2018 addressed to the Hon'ble Minister of Agriculture, the examination was conducted successfully. In view of the abovementioned, we see no plausible contention raised by the Respondent which requires any further investigation with respect to the deletion of CCTV Footage."*

17. The Adjudicating Authority was not to enter into dispute which has arisen out of the Facility Agreement between the parties and to examine the dispute on merits. Limited jurisdiction of the Adjudicating Authority was to find out as to whether the dispute raised by the Corporate Debtor is not a moonshine dispute and unsupported by relevant evidence. The legislative scheme is that Section 9 cannot be invoked by Operational Creditor when there is a dispute between the parties since Section 9 was not a proceeding for determining the contractual dispute between the parties and is not a forum to decide the liabilities under a contract between the parties. Demand notice in the present case was issued on 03.12.2019 and there was sufficient material on the record to indicate that there was pre-existing dispute between the parties in June 2018 itself.

18. Insofar as reliance of the Adjudicating Authority on the letter/ representation of the Corporate Debtor to the Minister of Agriculture, Government of India that it has successfully conducted the examination, the said was a stand taken by the Corporate Debtor before the Minister of Agriculture by filing a representation in relation to termination of contract by

ICAR. The dispute between the ICAR and Corporate Debtor regarding termination of contract and any representation made by the Corporate Debtor to the Minister of Agriculture can have no bearing between pre-existing dispute between the Corporate Debtor and the Operational Creditor. Present is not a case where the Adjudicating Authority was required to look into any dispute between the Corporate Debtor and the ICAR and reliance on the representation made by the Corporate Debtor to the Minister that examination was successfully conducted is wholly misplaced and irrelevant. The Adjudicating Authority further in paragraphs 20 and 21 referring to ledger account of the Corporate Debtor stated that there are admitted balance of Rs.4,04,260/- which is being more than threshold, Section 9 application has to be admitted.

19. We have already held that there being pre-existing dispute, Section 9 application deserves rejection and the ledger account of the Corporate Debtor showing balance of Rs.4,04,260/- was not relevant in the facts of the present case. More so, when there was dispute between the Operational Creditor and the Corporate Debtor with regard to invoices raised by the Operational Creditor which were refuted by notice of dispute given by Corporate Debtor. Adjudicating Authority was obliged to reject the application under Section 9(5)(2)(d). The present is a case where notice of dispute has been received by the Operational Creditor and it is not the finding of the Adjudicating Authority that notice of dispute is a moonshine dispute and unsupported by evidence. The judgment of the Adjudicating Authority, thus, cannot be approved in view of the law laid down by the Hon'ble Supreme Court in paragraph 51 of the

"Mobilox Innovations Private Limited" (supra). We, thus, are satisfied that the Adjudicating Authority committed error in admitting Section 9 application filed by the Operational Creditor. The order impugned dated 18.09.2023 cannot be sustained. In result, the Appeal is allowed. Order dated 18.09.2023 passed by the Adjudicating Authority is set aside. Section 9 application being CP (IB) No.556 of 2020 is rejected.

Parties shall bear their own costs.

[Justice Ashok Bhushan]
Chairperson

[Barun Mitra]
Member (Technical)

<u>New Delhi</u>
Anjali