

**IN THE NATIONAL COMPANY LAW TRIBUNAL
KOCHI BENCH, KERALA**

IBA/18/KOB/2020

(Under Section 9 of Insolvency and Bankruptcy Code 2016)

Order delivered on 25th September, 2020

Coram:

Hon'ble Shri Ashok Kumar Borah, Member (Judicial)

In the matter of

M/s. V.K.Building Services Private Limited,
M.142, 9th A Main, J.B. Nagar,
LIC Colony, HAL III Stage, Bangalore,
Karnataka-560 075.

..... Applicant/Operational Creditor

Vs.

M/s Marymatha Infrastructure Private Limited
Building No.XVII/180,
Marymatha Square, Arakuzha Road
Muvattupuzha, Ernakulam,
Kerala-686661.

.....Respondent/Corporate Debtor

Parties/Counsel present (through video conferencing)

Counsel for the Operational Creditor : Shri A., Kevin Thomas, Advocate

Counsel for the Corporate Debtor : Shri P.Shanes Methar, Advocate

ORDER

This is an application filed on 17.02.2020 under Section 9 of Insolvency & Bankruptcy Code, 2016 (hereinafter as 'I&B Code') read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 (hereinafter referred to as Rules) by the applicant **M/s. V.K Building Services**

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Pvt Limited (hereinafter referred to as ‘Operational Creditor’) a company within the meaning of Section 2(20) of the Companies Act, 2013, having CIN U74900KA2009PTC051150, to initiate Corporate Insolvency Resolution Process (CIRP) against **M/s. Marymatha Infrastructure Private Limited** (hereinafter referred to as ‘Corporate Debtor/Respondent’).

2. The Corporate Debtor is a private limited Company incorporated on 15.07.2019 under the Companies Act, 2013, with the Registrar of Companies (RoC), Ernakulam, Kerala. Its CIN is U45309KL2019PTC058816. Its registered office is at Building No. XVII/180, Marymatha Square, Arakuzha Road, Muvattupuzha, Ernakulam, Kerala-686661. Therefore, this Bench has jurisdiction to deal with this application.

3. The present application has been filed before this Tribunal on the ground that the Corporate Debtor failed to make payment of a sum of ₹ 2,26,30,208 (Rupees Two Crore Twenty-Six Lakhs Thirty Thousand Two Hundred and Eight only) as principal and ₹ 4,07,093 (Rupees Four Lakhs Seven Thousand and Ninety-Three only) as interest, from the date of default.

Case of the Operational Creditor:

4. The Corporate Debtor is a construction company, registered with ROC, Kerala. The Corporate Debtor, which was originally incorporated as a partnership firm by name Marymatha Construction Private Limited, obtained

the contract for the construction of the Goa Shipyard office building at Vasco da Gama, Goa.

5. The Operational Creditor is a renowned Mechanical, Electrical and Plumbing (MEP) works Contracting Company that carries out various projects across India. The Corporate Debtor subcontracted two portions of the work, specifically, the Heating, Ventilation and Air Conditioning work (hereinafter called as the “HVAC work”) and the Electrification work to the Operational Creditor. The contracts were for supply and installation. The Operational Creditor was to raise invoices periodically for both the contracts and the Corporate Debtor was obligated to clear 80% of BoQ rates for the supply of materials within one month of submission of invoices, as per the work order payments. However, the Operational Creditor was also required to submit a bank guarantee for 10% of the BOQ rate. The Operational Creditor did not submit a bank guarantee and chose to raise interim bills for only 70% of the BOQ, automatically adjusting the bank guarantee amount of 10% from 80%.

6. The Operational Creditor was only awarded a part of the work and that there were several other sub-contractors who were assigned different tasks after providing phase wise clearance at the project site. However, the Corporate Debtor miserably failed to provide a schedule and failed to effectively coordinate the work between all its, subcontractors, delaying the execution of the Operational Creditor’s work. Therefore, Operational Creditor was unable to commence its work from 01.01.2019, no clearance was given to it until

March 2019 and hence the Operational Creditor could commence work only by April, 2019.

7. The HVAC works was given by way of Work Order MMC/COGS/378 dated 17.10.2018 for a total consideration of ₹ 7,62,71,187. The Operational Creditor carried out its work and raised invoices periodically and the total amount received is ₹ 3,16,19,380. Hence the balance outstanding in respect of the HVAC work order dated 17.10.2018 is ₹ 2,20,50,555.

8. The electrification work for the same project was also given to the Operational Creditor by way of Work Order MMC/CO/GS/379 dated 26.10.2018 for a total consideration of ₹5,53,50,852. The operational Creditor carried out its work and raised invoices periodically and the total amount due is ₹1,26,38,127 out of an amount of ₹1,20,58,474/- was paid. Hence the balance outstanding in respect of the electrification work order dated 26.10.2018 is ₹ 5,79,653.

9. Similarly, the Operational Creditor raised a total of 7 interim bills for the Electrification work totalling ₹1,26,38,127/-. Out of this amount, after reducing the interim amounts received (₹ 1,07,73,241/-) and also deducting the TDS (₹ 2,14,205/-) and retention amount (₹ 10,71,028/-), the outstanding amount is ₹ 5,79,653/-. The working of computation of default at page 209 of Operational Creditors Application shows how the amounts have been adjusted. It is the last bill dated 30.09.2019 that is pending. The total principal outstanding is therefore ₹ 2,26,30,208 (₹ 2,20,50,555 (HVAC) ₹5,79,653

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(Electrification). Nominal interest of ₹ 4,07,093/- calculated as the rate of 8% per annum (banking rate on deposits) has also been claimed as per the Interest Act, 1978. The Operational Creditor, being a MSME is also entitled to interest on amounts under Section 16 of the MSME Act, 2006.

S.No.	Invoice Date	Invoice No	Invoice Amount	Due Date	Retention	TDS	Payment received Date	Received amount	Outstanding Amount	Interest @ 8% as on 10.02.20	Total Outstanding
1	2/27/2019	VKP30-002/18-19	3,479,910	3/29/2019	294,908	58,982	20.03.2019	1,470,000			
2	3/30/2019	VKP30-004/18-19	1,768,717	4/29/2019	149,891	29,978	11.04.2019	676,020			
3	4/29/2019	VKGA-002/19-20	1,412,803	5/30/2019	119,729	23,946	30.04.2019	784,000			
4	9/19/2019	VKGA-009/19-20	3,738,285	10/19/2019	316,804	63,361	30.05.2019	804,848			
5	9/19/2019	VKGA-011/19-20	291,449	10/19/2019	24,699	4,940	17.07.2019	1,260,928			
6	9/25/2019	VKGA-012/19-20	1,285,508	10/25/2019	108,941	21,788	21.08.2019	2,450,000			
7	9/30/2019	VKGA-014/19-20	661,455	10/30/2019	56,056	11,211	21.09.2019	908,121	579,653	13,086	592,739
8							21.09.2019	261,811			
9							27.09.2019	1,815,118			
10							27.09.2019	167,616			
11							27.09.2019	174,779			
		Total	12,638,127		1,071,028	214,206		10,773,241	579,653	13,086	592,739

TOTAL (A+B) : 2,24,44,562 + 592,739 = 2,30,37,301/-

10. Meanwhile, the Corporate Debtor on 28.08.2019 issued a letter stating that 'Marymatha Construction Company' a partnership firm is converted into a private Limited Company and registered under the Companies Act, 2013. Thereafter on 01.10.2019 the Corporate Debtor confirmed total amount due in work orders and undertook to honour the bills/invoices raised against the works executed until the incorporation of the company from the partnership account. Later, on 18.11.2019 the Corporate Debtor terminated both the contracts stating that "At this Juncture, please be informed that as you have failed to achieve the final completion of the and 6 floors HVAC and Electrical works on 02.11.2019, failed to achieve various targets mentioned above, failed to increase the manpower to facilitate the works,

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damaging our existing works done by other contractors which was periodically informed to you, we hereby terminate you for the works cited ref (1) and Ref (2) at your risk and cost. You are hereby instructed to stop the works and take joint measurements for the works executed by you for further process”.

11. On 21.11.2019 the Corporate Debtor called the Operational Creditor for a meeting to move forward with the contract on a revised schedule, superseding the termination notice. However, the Corporate Debtor proposed new payments terms which were not acceptable to the Operational Creditor which in turn requested to release the due payments immediately to support proper execution of the project.

12. As the Corporate Debtor has failed to clear the pending dues, the Operational Creditor issued a Demand notice dated 20.01.2020. The Corporate Debtor replied to the said notice by an undated letter which was received by applicant Operational Creditor on 31.01.2020 through e-mail. The Corporate Debtor raised issues of delay in execution of work and termination of work, which have in fact been superseded by the agreed portion of the Minutes of the Meeting dated of 21.11.2019. Moreover, the issues of delay raised pertained to the period for which no claim is made by the Operational Creditor in this Application. It is reiterated that the Operational Creditor's claim is limited to the invoices raised from 27.02.2019 to 26.10.2019 and not for the period referred to in the reply letter.

13. Under these circumstances the Operational Creditor filed the present application under Section 9 of the I&B Code before this Tribunal to

initiate Corporate Insolvency Resolution Process (CIRP), for which payments were not made by the Corporate Debtor raising a dispute.

Case of the Corporate Debtor:

14, The Corporate Debtor has filed a reply to the application on 07.02.2020, denying all allegations. In brief, the Corporate Debtor's defence are as follows:

 Firstly, the payment terms as agreed between the parties are: -

(a) Electrical work: "80% of the BOQ rate for the supply of equipment's excluding circuit wiring and point wiring (for circuit and point wiring 60%) within one month of the bill submission. Corporate Debtor has to furnish a bank guarantee for the balance 10% (difference in value between 70% and 80%) of BOQ rate for the corresponding materials supplied which will be valid for 6 months".

(b) In respect of HVAC work "the payment shall be done against 80% of the BOQ rate for the supply of equipment within one month of the submission of bill. However, they should furnish a bank guarantee for the balance 10% difference in value between 70% and 80%) of BOQ rate for the corresponding materials supplied which will be valid for 6 months".

15. Secondly, supply of equipment/material is complete only when the Corporate Debtor approve the detailed technical specification of the item supplied by the Operational Creditor. It is also required to submit the test

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certificates, guarantee card, warrantee card etc. for all the items supplied by them. The supply will be complete only after conducting random testing of materials in accordance with quality assurance plan. The Operational Creditor has not supplied any of the items as per the BOQ specification in full. Till the date of filing of this application no test in relation to any of the materials supplied by the Operational Creditor was conducted. Thus, it is clear that the items supplied by the Operational Creditor was not of approved quality. It is also pertinent to note that the Operational Creditor had admitted the defects in the materials supplied by them in various communications.

16. The Operational Creditor in this application has raised 9 invoices in relation to HVAC work. But only up to 8th bill (Inv. No VKGA 015/19-20 dated 30-09-2019) stand intimated by the site officials of Corporate Debtor to the Corporate Office, citing suspicion over the items supplied, Hence the technical team of Corporate Debtor had a thorough inspection of the item supplied wherein it was found that many of the materials supplied were not approved make, it was seen dumped in utmost careless manner and observed damage in already supplied material/ equipment. Hence, Corporate Debtor intimated Operational Creditor that only when the defects/shortfalls are rectified 8th bill will be considered for payment in accordance with the conditions. The 9th invoice/ bill is related to supply of Chiller, which is found

to be defective during inspection and even according to the manufacturer it is defective as per the certificate dated 29.11.2019 issued by Voltas Ltd.

17. The Operational Creditor has mentioned about 9 invoices in respect of HVAC work and the total amount claimed is Rs.5,36,69,935/-. The invoices raised by Operational Creditor up to 8th bill comes to Rs.3,33,89,261/-. The Operational Creditor admit that they have received Rs.2,61,61,511/- after statutory deductions such as TDS to the tune of Rs.9,09,660/- and retention being 5% and security deposit of 5% which comes to Rs.45,48,299/-. So, the net amount received comes to Rs.3,16,19,380/- Even going by the averment in the application the balance due can be only Rs.17,69,881/- and not Rs.2,20,50,555/- The TDS has already been paid to the Government and the Retention and Security Deposit can be released only on successful completion of the work and on completion of DLP. But as per the terms of the work order, no amount is due to the Operational Creditor from Corporate Debtor with respect to HVAC work. The invoices raised by Operational Creditor is not in tune with the terms of the work order. As per the terms of the work order Corporate Debtor is bound to release only 70% of the cost of the material upon satisfactory supply of materials. The chart below will give a clear picture of the amount which Corporate Debtor ought to have paid to the Operational Creditor and the amount actually paid and the excess amount held by the Operational Creditor.

Sl. No	Invoice No & date	Amount Claimed by VKBS	Bills forwarded from Site to Corporate	Material Part at BOQ Rate	Labour/Service Part at BOQ rate	Amount Paid	Excess payment	Value of Defective Materials
1	VKP30-001/18-19 dated 27-02-2019	2027209	2027209	1735863	291347	2027210	291347	224017
2	VKP30-003/18-19 dated 30-03-2019	15082921	15082921	12543761	2539159	15082920	2539159	1979197
3	VKGA-001/19-20 dated 29-04-2019	2173080	2173080	1712494	460586	2173080	460586	527642
4	VKGA-007/19-20 dated 31-07-2019	2368473	2368473	2063470	305003	2368473	305003	633963
5	VKGA-008/19-20 dated 19-09-2019	2806976	2806976	2510266	296710	2806976	296710	667187
6	VKGA-010/19-20 dated 19-09-2019	2671078	2671078	2454152	216926	2671078	216926	700170
7	VKGA-013/19-20 dated 25-09-2019	2020605	2020605	1763199	257406	2020605	257406	
8	VKGA-015/19-20 dated 30-09-2019	4238919	4238919	3126871	995827			
9	VKGA-016/19-20 dated 26-10-2019	20280674						
	TOTAL	5,36,69,935	3,33,89,261	2,79,10,076	53,62,964	2,91,50,342	43,67,137	47,32,177

18. They further submitted that no amount is due to Operational Creditor by MIPL in connection with HVAC work. An amount of ₹43,67,137/- is excessively paid to Operational Creditor and the same is liable to be returned. In addition to the above sum, an amount of ₹47,32,177/- is liable to be recovered from VKBS for supply of defective materials/equipments.

19. The Corporate Debtor also submitted that the Operational Creditor mentioned about 7 invoices in respect of Electrical work and the total amount claimed is ₹ 1,26,38,127/-. The invoices raised by Operational Creditor upto 6th bill comes to ₹1,19,76,672/-. The Operational Creditor admit that they have received ₹ 1,07,73,241/- after statutory deductions such as TDS to the tune of ₹ 2,14,205/- and retention being 5% and security deposit of 5% which comes to Rs.10,71,028/-. So, the net amount received by Operational Creditor comes to ₹1,20,58,474/-. Hence it is clear that an amount of ₹ 24,61,137/- is excessively paid to Operational Creditor and the same is liable to be

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returned. In addition to the above sum an amount of ₹ 14,50,233/- is liable to-be recovered from Operational Creditor for supply of defective materials/equipments. The Chart below will give a clear picture of the amount which the Corporate Debtor ought to have paid to the Operational Creditor and the amount actually paid and the excess amount held by the Operational Creditor.

Sl No	Invoice No & date	Amount Claimed by VKBS	Bills forwarded from Site to Corporate Office	Invoice Value (70%)	Material Part at BOQ Rate	Labour/Service Part at BOQ rate	Amount Paid	Excess payment	Value of Defective Materials
1	VKP30-002/18-19 dated 27-02-2019	3479910	3479910	3479910	2417041	1062869	3479910	1062869	1071784
2	VKP30-004/18-19 dated 30-03-2019	1768717	1768717	1768717	1377837	390880	1768717	390880	230736
3	VKGA-002/19-20 dated 29-04-2019	1412803	1412803	1412803	1192731	220072	1412803	220072	81903
4	VKGA-009/19-20 dated 19-09-2019	3738285	3738285	3738285	3378673	359611	3738284	359611	21270
5	VKGA-011/19-20 dated 19-09-2019	291449	291449	291449	221465	69985	291450	69985	31796
6	VKGA-012/19-20 dated 25-09-2019	1285508	1285508	1285508	927788	357720	1285508	357720	12744
7	VKGA-014/19-20 dated 30-09-2019	661455							
	TOTAL	1,26,38,127	1,19,76,672	1,19,76,672	95,15,535	24,61,137	1,19,76,672	24,61,137	14,50,233

20. From the above table it is clear that there is no default on the part of Corporate Debtor in payment of any amount legitimately due to Operational Creditor. The claim made in the application is with regard to works which the Operational Creditor has not executed.

21. The Operational Creditor had damaged the civil works which Corporate Debtor had done. Now at this juncture for rearranging the balance works the Corporate Debtor need to expend a further sum of Rs.15.13 Crores for the fault of Operational Creditor, the Corporate Debtor suffered a loss of

Rs.2.50 Crores as part of cost escalation, which is liable to be recovered in terms of Clause 21 of the work order. Hence the Corporate Debtor has already moved a Commercial Suit No.224/2020 before the Margao Court, Goa to recover the above sum.

Findings: -

22. I have gone through the pleadings on record and perused the submissions made by learned counsel on either side. On a careful perusal of the documents it is noticed that there were two work orders given to the Operational Creditor by the Corporate Debtor as sub-contract, i.e. HVAC works was given by way of Work Order MMC/COGS/378 dated 17.10.2018 for a total consideration of ₹ 7,62,71,187 and electrification work for the same project was also given to the Operational Creditor by way of Work Order MMC/CO/GS/379 dated 26.10.2018 for a total consideration of ₹5,53,50,852. It appears from the record that the time period for completion for work was for a period of 11 months i.e. from 01.01.2019 to 30.11.2019. The Corporate Debtor also admit that the work order was provided to the Operational Creditor. On 07.09.2019 Corporate Debtor sent an e- mail stating that: -

QUALITY ISSUES IN '1F' AND 'DELAY IN ELECTRICAL WORKS'

"This is to inform you that 1F electrical works which was started in 14 Mar 2019 hasn't been completed till date. Your team had started work in 2F on 6 May 2019 and 3F on 05 Jun 2019 but only 10% works is completed in 2F and 3F. This shows the utter failure of your execution team at site and' office in mobilizing workforce and tack of proper planning. Quality of work is the worst as you can see in the attached photographs. No proper supervision is done by your execution team as your subcontractor is working at his own will. We had already informed your execution team several times to monitor

the works done at site. The same was earlier conveyed to Mr. Jihendra, Mr. Rajesh Dubey and Mr. Vivek Singh several times during their visits at site and through mails. But your execution team is showing no interest in completing the work within committed dates and with required quality, we had already informed your site team that strict action will be taken and heavy penalty will be imposed if these issues are not rectified.

C bends and junction boxes used instead of MS on MS conduits.

proper spacing not maintained in clamping of conduits.

Poor quality in installation of DBs.

Conduit routing not done properly.”

23. Countering the aforesaid dispute dated 07.09.2019 the Operational Creditor stated in the rejoinder that “*With regard to the averments in paragraph 10 of Affidavit in Reply, the contents of paragraph 10 above are reiterated. It is reiterated that testing, commissioning, providing guarantee/warranty cards arise only at the final stage when handing over is done. The reliance on clause 46 of the work order is also blatantly Wrong as same comes into effect only at the final stage of testing, commissioning and handing over. It is denied that the Operational Creditor did not supply materials of the approved make and that defective materials were supplied. It is nothing more than an unsubstantiated contention taken after receiving the entire amount from the principal contractor.*”

24. But the Operational Creditor nowhere challenged the contention in Annexure R1 C (dated 07.09.2019). But in page 4 of the rejoinder submitted by the Operational Creditor it is stated that in the instant case claim is only for the completed supplies and works up to October 2019, but it appears from the aforesaid e-mail that the dispute was raised much prior to the claim amount raised by the Operational Creditor.

25. Later the Corporate Debtor terminated the work order advanced to the Operational Creditor on 18.11.2019. Thereafter on 21.11.2019 (as per Corporate

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Debtor upon request of the Operational Creditor conducted the meeting) both the parties agreed to continue the work based on the minutes in which the Operational Creditor disagreed to and stated that *'the payment terms suggested by Marymatha (Corporate Debtor) above are not agreeable and requested to release substantial money in the interest of job'* The relevant portion of the minutes of the meeting is reproduced herein below:-

Discussion Points'

- *It is mutually agreed that the following work will be completed by VKBS as mentioned below:*
 - a. *VKBS will complete the entire (above false ceiling, walls and partition) electrical and HVAC work inside the building i.e. Basement to Sixth floor on or*
 - b. *Testing and commissioning of the HVAC work by 15.02.2020 and electrical work by 20.02.2019*
 - c. *External services related to electrical works will be completed by 15.01.2020*
- *Plant room pedestals in terrace floor to be finished by Marymatha on 30.11.2019.*
- *Marymatha needs to provide temporary doors at all floors for AHU rooms, electrical rooms, server rooms etc after the panel erection by 30.11.2019*
- *Internal and External works like cabling, street lights, bollard lights, street pole, earthing works, and Lightning arrestor etc. to be studied in detail by VKBS and a micro level programme should be submitted to Marymatha after discussion with site engineers and further approval from Mr. CP Rajesh on or before 27-11-2019*
- *VKBS has requested to de scope labour portion of external cabling works (300sqm) - from their scope of work as supply portion was already descoped earlier which will be discussed with the directors of Marymatha and decision will be taken later.*
- *VKBS has committed to increase their labour strength as per the attached schedule and also agreed to engage two additional site engineers for achieving the rate of progress as per the above schedule.*
- *VKBS should submit to Marymatha all warranties and guarantees of materials which are Supplied to site before its payment are released.*
- *VKBS has requested Marymatha to release payment of the subject work and Marymatha has suggested the same under the fulfilment of the following conditions:*
 - *Successful completion of 5" and 6" floor along with the testing of all electrical points.*
 - *Chiller Payment: 70% of the gross bill amount after rectification works of the Chiller indicator "5G drop N tell" of two chillers or by submitting a Bank guarantee for the equivalent amount.*

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26. The above 'minutes of the meeting' shows that as per the agreed terms, Operational Creditor carried the work with a revised schedule. But it is clear from the e-mail communications dated 02.12.2019, 11.01.2020 etc... (sent by the Corporate Debtor after the agreed terms on 21.11.2019) the work schedule agreed by the Operational Creditor is not fulfilled. The e-mail communication dated 02.12.2019 sent to Operational Creditor is reproduced below: -

"Dear Sir

The dates committed in the MOM is not adhered in none of the floors. As per the meeting all the works in the floor were supposed to be completed by 25.11.19

Please note the balance works in the 6th floors

- 1, CHW piping insulation 10 %*
- 2. Electrical - 8 light points pending in toilets*
- 3. DB dressing*
- 4. Electrical points testing as per the commitment*

Like this all the floors are pending. We don't think you can complete the work as per the committed dates. As per the commitment you were supposed to increase the manpower by 113 by yesterday. But there are only 63 persons at site. Please increase the manpower and try to complete the works as soon as possible. Also, the fault rectification of the two chillers is not done."

27. The Site Inspection Report of VOLTAS dated 29.11.2019 (Annexure R 1 (H)/2 is reproduced herein below: -

Conclusion: 02 Nos of the chillers out of 03 having mid impact and it can be repaired at the time of commissioning. It will not effect on chiller life and performance of the chiller.

But it is clear from the aforementioned e-mail communication that the said fault is not cleared by the Operational Creditor.

28. Email communications and correspondences between the parties produced would show that there is a **“pre-existing dispute”** between the parties, much prior to the demand notice, regarding the quality of the work done, which is not being solved. It is also evident that the Operational Creditor also failed to fulfil the commitment made in the minutes of the meeting.

29. In this connection, para No.40 of the decision of the Hon’ble Supreme Court in *Mobilox Innovations Private Limited v. Kirusa Software Private Limited*, [Civil Appeal No.9405 of 2017 dated 21.09.2017] can be referred to which reads:

*“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”.*

30. In respect of the definition of “dispute”, the law is now very much settled by several courts, most importantly the decision of the Hon’ble Supreme

Court in *Mobilox* (supra) in which it is clearly observed that the Adjudicating Authority is to examine at the stage of admission **whether there is a plausible contention which requires further investigation and on assertion of fact a dispute is supported by evidence.** The expression used in Section 8(2) of the Insolvency & Bankruptcy Code “existence of a dispute, if any” is very significant, because the Legislature is deemed not to waste its words or to say anything in vain, hence every word is significant, as held in *Mithlesh Singh Vs. Union of India, (2003) 3 SCC 309*. It is also important to clarify that if the intent of the legislature was to limit the dispute to only a pending Suit or Arbitration (refer Section 5(6) Definition of Dispute) then there was no requirement to add Section 8(2)(a) of the Code “existence of a dispute, if any”. A harmonious and conjoint reading is, therefore, required. A view has also been expressed that the definition of ‘dispute’ as per Section 5 of Insolvency & Bankruptcy Code is illustrative and not exhaustive. It is held that a ‘**dispute**’ **must not be spurious, hypothetical or illusory, quoted verbatim “So long as a dispute truly exists in fact and is not spurious, hypothetical or illusory, the adjudicating authority has to reject the application”.** This Tribunal is also expected to see whether there is a plausible contention of dispute and not a feeble argument. Therefore, all that this Tribunal 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.

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31. Finally, a conclusion is hereby drawn that this is not a case where the impugned Debt and the alleged default was free from existence of plausible dispute or merely a feeble argument; but duly supported by corroborative evidences. Therefore, it cannot be proceeded under the Insolvency Code so as to commence CIRP by declaring the Debtor insolvent or bankrupt. It is worth to put on record that the scope and jurisdiction of this Tribunal is limited and also confined to the provisions of Insolvency Code while dealing with application filed under Section 9. Therefore, the impugned debt in question does not fall within those ambits. However, the claim under any other law, if permissible, can be pursued by the applicant as prescribed under that law. Any observation, legal or factual, shall not prejudice the rights of the applicant, if to be exercised under any other law.

32. With the aforesaid observations and considering the totality of the facts and circumstances of the case and the law applicable, this application does not survive for consideration under the Insolvency and Bankruptcy Code. Hence, IBA/18/KOB/2020 is “**Dismissed**”. No Order as to costs.

Dated the 25th day of September, 2020

Sd/-
(Ashok Kumar Borah)
Member (Judicial)