NATIONAL COMPANY LAW APPELLATE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

Company Appeal (AT) (Insolvency) No. 860 of 2024

[Arising out of Order dated 02.02.2024, passed by the 'Adjudicating Authority' (National Company Law Tribunal, Allahabad Bench) in CP (IB) No. 83/ALD/2022)]

IN THE MATTER OF:

Mosco International Commodities Private Limited
Through its Director
Mr. Kishankumar Prabhu Rabari
Registered office at: Ganesh Bhavan
Plot No 48, Sector-8, Gandhidham
Kachchh, Gujarat – 370201 **...Appellant**

Versus

SBEC Sugar Limited
Registered Office at:
Village Loyan Malakpur, Baraut,
Distt. - Baghpat, Uttar Pradesh- 250611 **...Respondent**

Present:

For Appellant	:	Mr. Aditya Madaan, Mr. Prabhav Pachory and Mr. Ajit Kumar, Advocates
For Respondent	:	Mr. Gaurav Mitra, Mr. N.S. Ahlliwalia, Mr. Salilseth and Mr. Adhish Sharma, Advocates

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

[Per: Arun Baroka, Member (Technical)]

This Appeal is filed under Section 61 of the Insolvency and Bankruptcy Code, 2016 ("Code") by Mosco International Commodities Private Limited ('OC/ Operational Creditor') against the Impugned Order dated 02.02.2024 passed by the AA wherein Section 9 petition preferred by the OC against SBEC Sugar Limited ('CD/ Corporate Debtor') was dismissed for not meeting the threshold limit as prescribed under Section 4 of the Code.

Appellant's Case

2. On 14.12.2020, the OC sent a 'Letter of Interest' to the CD for procuring 55,000 quintals Molasses for the season 2019 – 20 & 2020 – 21 from the sugar mill of the CD. The said procurement was to take place in two tranches i.e., 27,500 quintals for the season 2019 – 20 @ Rs./- 450 per quintal + GST and 27,500 quintals for the season 2020 – 21 @ Rs./- 555 per quintal + GST.

3. Thereafter on 15.12.2020, CD issued a sale order confirming the procurement and requested the OC to issue the purchase order (Page 32 of the Appeal). Thereafter, the Appellant issued a Purchase Order No. 4500015 to the CD whereby the CD was asked to supply the said quantity of molasses. It is to be noted here that in terms of the purchase order, an ad-hoc advance payment of Rs. 2,02,63,750 was made to the CD.

4. On 06.03.2021, the sale order was unilaterally cancelled by the CD and till then only 18,771.35 quintal molasses were supplied to the OC. As the balance quantity was not supplied, the CD was to refund an amount of Rs.1,08,02,731/- to the OC. (Page 34 of the Appeal). But after several reminders, the CD failed to pay the advance amount back to the OC. Around 19 reminders were sent by the OC to the CD demanding the refund of amount in default, however, the CD didn't respond or acknowledged any of the said correspondences. Consequently, on 31.05.2022 the OC was constrained to send a demand notice u/s 8 of the IBC to the CD (Page 36 of the Appeal). The CD sent a reply to the said demand notice issued by the OC on 11.06.2022 (Page 36 of the Appeal). Thereafter, the OC sent a response to the reply to the demand notice (Pages 41 – 42 of the Appeal. However, the CD failed to repay

the unpaid operational debt. Therefore, an application u/s 9 of the IBC was filed by the OC before the Hon'ble NCLT Allahabad which was dismissed vide an order dated 02.02.2024.

5. Pursuant to the issuance of Demand Notice, the CD apart from sending a reply dated 11.06.2022 to Demand Notice also transferred an amount of Rs.13,13, 886/- (alleging it to be payment for the entire operational debt i.e., Rs. 1,08,02,731/-) on the pretext that there was a "spontaneous combustion" at the plant of the Corporate Debtor on 22.07.2021 due to which certain quantities of molasses were damaged which included the balance quantity of molasses that was allegedly earmarked for the OC. In the said reply, the CD also alleged that the said damaged molasses has been auctioned, an approval letter has been issued by CD to the alleged buyer on 14.02.2022 and the salvage value of the balance quantity of Molasses of the OC was Rs.13,13,886/-. It is submitted that the aforesaid narrative was never even mentioned to the OC until the issuance of Demand Notice despite the said notice being preceded by 19 reminders communications (which was sent on 31.05.2022, i.e., after 10 months of the happening of spontaneous combustion).

6. The amount in default in the present Appeal is Rs.1,08,02,731/- along with interest at the rate of 24% per annum (unpaid operational debt), the said amount became due and payable by the CD to the OC on 14.06.2021 i.e., after the OC requested the CD to refund the aforesaid amount. However, the said amount was not refunded with the sole intention to usurp the balance amount.

7. Despite 19 e-mail reminders, the CD neither responded nor raised any dispute qua the amount. Any dispute raised by the CD after issuance of demand notice is spurious, hypothetical and illusory. Reliance is placed on **Soham Polymers Pvt. Ltd. v. Flocksur India Pvt. Ltd, Order dated 14.02.2022, Co. Appeal(AT) (Ins.) No. 924 of 2021**, which was also on the very similar facts.

8. It is a settled position that a pre-existing dispute can only be considered to be proven, if it exists prior to the issuance of the demand notice and that the CD has denied the liability. In the present case, there is no proof of pre-existing dispute and in-fact the CD has admitted its liability. A perusal of the pleadings clearly demonstrates the malicious conduct of the CD and how it has attempted to mislead this Appellate Tribunal and avoided making payments of the amount in default by conveniently manufacturing a fictitious, false and non – existent narrative. The same can be corroborated from the following:

- The fact pertaining to alleged <u>spontaneous combustion</u> on 22.07.2021 in the plant of CD was <u>never communicated</u> by the CD to the OC, <u>until issuance of demand notice</u>, i.e., 31.05.2022, irrespective of the fact that the OC was continuously following up with the CD for the refund of the unpaid operational debt. It is submitted that there is absolutely no rationale as to why the CD would conceal the same, if the molasses that were damaged included the molasses allegedly earmarked to OC.

- The CD <u>never informed</u> OC regarding the alleged <u>auction process</u> that took place with respect to sale of salvage molasses, irrespective of the fact that the as per the false narrative of the CD, the molasses that were being auctioned included the balance quantity of molasses that were allegedly damaged during the spontaneous combustion.

- Even after the issuance of the approval letter by the CD to the alleged buyer of damaged molasses on 14.02.2022, the CD didn't communicate to the OC about the salvage value of the balance quantity of molasses which allegedly came out to be Rs.13,13,886.

- The approval letter was issued by the CD to the alleged buyer on 14.02.2022, however, the CD didn't inform the OC about any such sale, irrespective of the fact that on 23.03.2022, a reminder for refund was sent by the OC to CD.

- The transfer of Rs.13,13,886 pursuant to issuance of the demand notice clearly demonstrates that the aforesaid transfer has been made by the CD with a clear intent to wriggly out of the ambit of the minimum threshold amount of default for the purpose of filing an application u/s 9 of the IBC.

9. Appellant prays that the present Appeal be admitted and CIRP be commenced with respect to the CD:

a) The alleged <u>'spontaneous combustion'</u> has <u>nothing to do with the balance quantity of molasses</u> because vide a letter dated 06.03.2021, the CD has already cancelled the sale order.

b) There exists <u>no dispute</u> between the OC and the CD prior to the issuance of demand notice dated 31.05.2022 or even as on date.

c) The <u>CD has not disputed its liability</u> to refund the advance paid by the OC.

d) It is a settled position of law that if dues are admitted as against the OC, the CD must pay the same. If it doesn't, the CIRP must be commenced.

e) The transfer of an amount of Rs.13,13,886 subsequent to the issuance of demand notice has been done with malice and only to wriggle out from the clutches of IBC. The said transfer made by the CD is a clear acknowledgement of unpaid operational debt.

f) The amount of default is more than INR 1,00,00,000.

g) The material on record proves the 'existence of debt' and 'default' on the part of the CD.

h) Section 9(3)(c) of the IBC is complied by the OC.

i) The application filed in Form 5 by the OC is complete in all respects and in compliance of the requisites of the IBC and the Rules and Regulations thereunder.

j) The OC is ready and willing to propose the name of an Insolvency Professional to be appointed as Interim Resolution Professional.

Respondent's case

10. The statutory notice under Section 8 of the Insolvency and Bankruptcy Code, 2016 was issued by the Appellant on 31.05.2022 and the present petition was filed on 20.08.2022, which is the initiation date of the present alleged insolvency proceedings. The claim of the Operational Creditor on the initiation date is less than the threshold limit of Rs. 1 Crore as defined under Section 4(1) of IBC, which is necessary for maintaining a petition under Section 9 of the Code. This fact has been admitted by the Operational Creditor in its petition.

11. Under Section 9 of IBC, an Operational Creditor is entitled to file an application for initiation of Corporate Insolvency Resolution Process (CIRP)

provided the quantum of default / debt is Rs. 1 Crore or above, as is mandated under Section 4 (1) of IBC as well as there is no pre-existing dispute between an Operational Creditor and the Corporate Debtor. However, in the present case, the alleged Operational Debt is less than Rs. 1 Crore and moreover, there is pre-existing dispute between the parties due to which the petition filed by the Appellant was rightly dismissed by the NCLT.

12. The Section 5 (11) of IBC clarifies that the 'initiation date' for initiating CIRP is the date when a petition is filed by a Financial Creditor or Operational Creditor or Corporate Applicant under Sections 7, 9 and 10. The threshold limit of Rs. 1 Crore as mandated under Section 4 (1) of IBC for maintaining a petition before the NCLT shall be considered from the initiation date and not the date when Notice under Section 8 of IBC was sent.

13. The mandatory threshold limit of Rs. 1 Crore as defined under Section 4(1) of IBC necessary for maintaining a petition before the NCLT under Sections 7, 9 and 11 of IBC is to be ascertained on the date of filing of the said petition i.e. the 'initiation date' as is defined under Section 5 (11) of IBC and not on the date of sending of the Demand Notice under Section 8 of IBC.

14. The aforesaid contention of the Respondent is further fortified from the law laid down by the Hon'ble Supreme Court of India vide its Judgment in the matter of **Ramesh Kymal v. Siemens Gamesa Renewable Power Private Limited, REED 2021 3 SCC 224.**

15. A joint reading of Section 4 (1), Section 5 (11) and Section 9 of IBC makes it clear that an Operational Creditor is entitled to institute an

application under Section 9 of IBC provided the quantum of default / debt is Rs. 1 Crore or above on the date of initiation of CIRP and there is no pre-existing dispute between the parties. However, in the present case, admittedly the quantum of debt on the date of initiation of CIRP is less than Rs. 1 Crore coupled with the fact there is pre-existing dispute between the parties and accordingly the petition filed under Section 9 was rightly rejected by the NCLT.

16. The Part II of the IBC (which deals with Insolvency Resolution and Liquidation for Corporate Person) will only come into operation if the Operational Creditor (Appellant herein) meets the minimum threshold of Rs.1 Crore, meaning thereby, there is no right to initiate CIRP after 24.03.2020 when minimum default is admittedly less than Rs. 1 Crore and therefore the petition filed by the Appellant herein was rightly rejected vide Impugned Order dated 02.02.2024.

17. Admittedly, in the present case, the Operational Debt, as is claimed by the Appellant is Rs. 94,88,845/- (since an amount of Rs. 13,13,886/- has already been paid out of the total amount Rs. 1,08,02,731/- claimed before the institution of the present petition), which is less than the mandatory minimum threshold of Rupees One Crore which is necessary to maintain a petition under IBC. Pertinently, the ledger filed by the Appellant along with the present appeal also indicates that the amount sought to be recovered from the Respondent is less than the minimum threshold of Rupees One Crore.

18. This Hon'ble Tribunal has consistently held that a petition under Section 9 of the Insolvency and Bankruptcy Code is not maintainable where

the alleged operational debt falls below the statutory threshold of Rs. 1 crore on the date of filing of such petition. The Respondent places reliance on the following case laws in support of its contention:

- Kavindra Kumar & Ors. vs. M/s Design Pvt. Ltd. Company Appeal (AT) (Insolvency) No. 1272 of 2023) (***Para – 17, 19***).
- Devika Resources Pvt. Ltd. vs. MAA Mansha Devi Alloys Pvt. Ltd. Company Appeal (AT) (Insolvency) No. 938 of 2024) (***Para – 14 – 17, 20, 21***).
- Metal's & Metal Electric Pvt. Ltd. vs. Goms Electricals Pvt. Ltd. Company Appeal (AT) (CH) (INS) No. 243 of 2021) (***Para – 20 – 22, 24, 25***).
- Hyline Mediconz Private Limited vs. Anandaloke Medical Centre Pvt. Ltd. (Company Appeal (AT) (Insolvency) No. 1036 of 2022) (***Para – 1, 2, 8, 10 – 14, 24 – 26***)

19. The undisputed fact is that the Appellant had issued demand notice under Section 8 of IBC on 31.05.2022 and application under Section 9 of IBC was filed on 20.08.2022. When the notice under Section 8 was issued, the total outstanding debt was Rs. 1,08,02,731, however, after the said notice was issued the Respondent made payment of Rs. 13,13,886/- claiming this amount to be salvage value of stock of molasses (which was not lifted within the time period agreed between the parties).

20. The purchase order was cancelled when the Appellant herein failed to lift the molasses by pre-agreed date of 07.02.2021 and thereafter, Molasses Controller and Excise Commissioner stopped supply of molasses to the Appellant.

21. The incident of fire has also been shown to have occurred attaching the necessary documents by the Respondent.

22. The Appellant herein has not denied that they have received payment of Rs. 13,13,886/- from the Respondent and the same is also mentioned in Part IV of the application under Section 9 of IBC. It is Appellant's case that the entire advance of Rs. 1,08,02,731/- should have been refunded as the molasses against the said amount was not supplied. However, as per the Respondent, it is only liable to refund only the amount pertaining to salvage value of molasses considering the quantity of molasses got destroyed in a fire.

23. Before filing application under Section 9 of IBC, the outstanding operational debt has undisputedly gone below Rs. 1 Crore i.e. Rs. 94,88,845/- (Rs. 1,08,02,731 - Rs. 13,13,886/-).

24. The Hon'ble NCLAT in case of **Metal's & Metal Electric Pvt. Ltd. vs. Goms Electricals Pvt. Ltd. (Company Appeal (AT) (CH) (INS) No.243 of 2021),** has held that, a mere running of the eye of the ingredients of Section 9 of the Code makes it lucidly clear that the date of initiation of CIRP shall be on the date on which an application is made. In the matter of **Jumbo Paper Products vs. Hansraj Agrofresh Pvt. Ltd. (Company Appeal (AT) (Ins) No.813 of 2021) dated 25.08.2021** also, it has been decided that the threshold limit of Rs.1 Crore will be applicable for application filed u/s 7 or 9 on or after 24.03.3020 even if default is of a date earlier than 24.03.2020. With the above stated decision of this Hon'ble Tribunal, it is quite evident that the threshold limit would be applicable on the date of filing of application, and not on the date on which the default has occurred.

25. The Appellant has also included interest @ 24% p.a. in the operational debt mentioned in Part IV of the application under Section 9 of IBC. The NCLT observes that there is no express agreement between the Appellant and the Respondent for computing interest due to any delay in refund of the advance amount to be paid by the Respondent. Further the Appellant could not produce any documentary evidence justifying charging of the interest. The NCLT relied upon judgment of this Hon'ble Tribunal in the case of **Prashant Agarwal Vs. Vikas Parasrampuria (Company Appeal (AT) (Ins) No.690 of 2022)** holding that both, the principal debt and interest on delayed payment will be considered to assess maintainability in case the interest was stipulated in invoice. In the present case, there is no agreement between the Appellant and the Respondent for payment of interest on delay of refunding of advance amount if any paid as well as there is no such condition in the Purchase Order, therefore the Appellant is not justified in claiming interest @ 24% p.a. till the date of payment in the total amount of debt as mentioned in Part IV of the application under Section 9 of IBC. Accordingly, interest amount @ 24% p.a. shall not be included in the total amount of debt for computing the threshold limit as provided in Section 4 of IBC for the purpose of admitting application under Section 9 of IBC.

26. The Appellant has not disclosed and has rather deliberately concealed material and critical facts which will demonstrate the existence of pre-existing dispute between the Parties. The Respondent had permitted the Appellant to lift molasses pursuant to permissions granted by the Molasses Controller & Excise Commissioner for the period 23.01.2021 to 07.02.2021. However,

during this period, the Appellant lifted only part of the allotted quantity and was subsequently found to have violated export conditions for which permission was granted. Consequently, the Commissioner revoked the lifting whereby vide communication dated 10.02.2021 the Respondent was directed to cease the supply of molasses to the Appellant and thereafter vide order 28.02.2021 the permission to lift molasses was revoked thereby compelling the Respondent to issue a cancellation letter on 06.03.2021.

27. In spite of cancellation of permission to lift molasses, the Respondent continued to hold the molasses on the Appellant's repeated requests while the Appellant attempted but failed to obtain necessary permission to lift molasses again. No claim or demand for refund was made by the Appellant until 14.06.2021, reinforcing the Respondent's stand that the Appellant had requested retention of the material.

28. On 22.07.2021, a spontaneous combustion incident at the Respondent's plant destroyed the stored molasses, including the quantity earmarked for the Appellant. The Respondent duly reported the incident to authorities, filed an insurance claim (which has been rejected and qua which litigation is pending in Consumer Court). The Appellant remitted an amount of Rs. 13,13,886/- to the Appellant towards salvage value determined through an independent e-auction.

29. Imperatively since the molasses is a controlled commodity and is sold strictly under statutory supervision, the Respondent acted fully in accordance with regulatory directions and even refunded the proportionate salvage value

on account of loss occurred due to an unforeseen accident. Therefore, the petition filed by the Appellant under Section 9 of IBC and the present appeal is totally untenable.

30. It is evident from the foregoing facts that a clear and bona fide pre-existing dispute existed between the Appellant and the Respondent well before the issuance of the demand notice and the filing of the petition under Section 9 of IBC. In view of such pre-existing dispute, the invocation of the insolvency process is impermissible and the petition under Section 9 is not maintainable in law and was rightfully rejected by the NCLT.

31. It has been time and again clarified by various Courts / Tribunals including the Hon'ble Supreme Court of India {in the matter of **Mobilox Innovations Private Limited vs. Kirusa Software Private Limited (2018 1 SCC 353)**} that whenever there is an existence of real dispute, the provisions of IBC cannot be invoked.

32. The NCLT vide Impugned Order dated 02.02.2024 rightly dismissed the claim of the Appellant since the Appellant herein was not justified in claiming interest at the rate of 24% per annum since there is no agreement between the Appellant and the Respondent for payment of interest on delay of refunding of advance money, if any.

33. The Interest amount claimed by the Appellant in the Section 9 petition filed before the NCLT, Allahabad does not fall under the term "operational debt" as defined under IBC and the same has also been clarified time and

again by various Courts / Tribunals. In this regard, reliance be placed on the following case laws:

- **Prashant Agrawal vs Vikash Parasrampuria & Anr. Company Appeal (AT) (Ins) No. 690 of 2022.**
- **M/s Wanbury Ltd. Vs. M/s Panacea Biotech Ltd. (2017 SCC OnLine NCLT 475).**
- **CBRE South Asia Pvt. Ltd. vs United Concepts and Solutions Pvt. Ltd.**

34. The Insolvency and Bankruptcy Code is a complete code in itself, containing detailed procedural and substantive requirements that govern the initiation and conduct of insolvency proceedings. The statutory framework of the IBC leaves no room for discretionary or expansive interpretation where the language is clear and unambiguous. The Hon'ble Supreme Court as well as this Hon'ble Tribunal have repeatedly emphasised that the IBC cannot be invoked mechanically or in deviation from the statutory scheme. The threshold limit prescribed under the code, timelines, issuance of notices, proof of debt, existence of dispute, and other statutory safeguards under Sections 8 and 9 of t IBC are not mere formalities but essential jurisdictional requirements. Furthermore, where the legislature has clearly prescribed conditions such as the minimum amount of default, the requirement of an undisputed operational debt, strict timelines, and the duty to ensure that no pre-existing dispute exists, the same must be interpreted and applied exactly as provided. Needless to add that deviation from the statutory scheme not only defeats the legislative intent but also renders the proceedings non-maintainable.

35. There are series of judgements wherein the Hon'ble Apex Court as well as various other Courts / Tribunals has deprecated and discouraged the practice of proceedings under IBC being misused as a substitute to recovery mechanism in accordance with law. The object of the IBC is not recovery of money but resolution of insolvency and maximization of assets of a Corporate Debtor. The Appellant is deliberately misusing the proceedings under IBC as a recovery proceedings, with the clear intent of circumventing the payment of court fees that would have been obligatory had a recovery suit been filed before a Civil Court. This frivolous and malicious strategy adopted by the Appellant demonstrates a calculated attempt to evade financial obligations as well as simultaneously opting for a shortcut approach to exert undue pressure and coerce the Respondent by choosing to approach the NCLT for recovery of an alleged debt (which is neither due nor payable) over the appropriate Civil Court.

36. The Respondent as on date is a going concern and is able to pay off its liabilities arising out of usual course of business as well as paying the salaries of 1130 number of employees / staff / labour (contractual or otherwise) and dues of the famers supplying sugarcane to the Respondent. As on date, approximately 40,000 number of farmers are dependent on the Respondent as they are supplying sugarcane to the Respondent since last 2-3 decades. The turnover of the Respondent (sugar mill) in the last 3 financial years has been in excess of Rs. 1500 Crores. Needless to add that the Respondent is the only sugar mill in the said area (i.e. Malakpur, Baraut, Uttar Pradesh) and in the event any order is passed admitting the present frivolous and malicious

proceedings, not only severe prejudice will be caused to the Respondent but also to employees / staff / labour (contractual or otherwise) and farmers (including their families) i.e. more than 2,00,000 number of people who are dependent on the Respondent for their livelihood.

37. In this regard, reliance be placed on the judgment of this Hon'ble Tribunal in the case of **Anshul Vashishtha vs. Jayhind Steel Traders (Company Appeal (AT) (Insolvency No. 656 of 2020**).

Appraisal

38. This Appeal is filed u/s 61 of the Code 2016 by Mosco International Commodities Private Limited ('OC/ Operational Creditor') against the impugned order dated 02.02.2024 passed by the AA wherein section 9 petition preferred by the OC against SBEC Sugar Limited ('CD/ Corporate Debtor') was dismissed for not meeting the threshold limit as prescribed u/s 4 of the IBC.

39. We have heard the counsels of both sides and perused the material placed on record. The primary issue before us is whether petition under section filed before the adjudicating authority meets the threshold as prescribed under Section 4 of the IBC or not.

40. Perusal of the materials placed on record show that the operational debt on the date of filing of the petition before the NCLT by the Petitioner (Appellant herein) admittedly was Rs. 94,88,845/- which is below the mandatory threshold limit of Rs. 1 Crore as provided under the provisions of IBC and

therefore the petition filed by the Petitioner (Appellant herein) is not maintainable.

41. Admittedly the statutory notice under Section 8 of the Insolvency and Bankruptcy Code, 2016 was issued by the Appellant herein on 31.05.2022. However, the petition under Section 9 IBC was filed on 20.08.2022 which is the 'initiation date' of the proposed insolvency proceedings.

42. At this stage we need to note the case of the Appellant which claims that on 14.12.2020, the OC sent a 'Letter of Interest' to the CD for procuring 55,000 quintals Molasses for the season 2019 – 20 & 2020 – 21 from the sugar mill of the CD and the said procurement was to take place in two tranches i.e., 27,500 quintals for the season 2019 – 20 and 27,500 quintals for the season 2020 – 21. Thereafter on 15.12.2020, CD issued a sale order confirming the procurement and requested the OC to issue the purchase order. An ad-hoc advance payment of Rs. 2,02,63,750 was made to the CD. But, on 06.03.2021, the sale order was unilaterally cancelled by the CD and till then only 18,771.35 quintal molasses were supplied to the OC. As the balance quantity was not supplied, the CD was to refund an amount of Rs.1,08,02,731 to the OC. But after several reminders, the CD failed to pay the advance amount back to the OC. Consequently, on 31.05.2022 the OC was constrained to send a demand notice u/s 8 of the IBC to the CD. Pursuant to the issuance of Demand Notice, the CD apart from sending a reply dated 11.06.2022 to Demand Notice also transferred an amount of Rs. 13,13, 886/- (alleging it to be payment for the entire operational debt i.e., Rs.1,08,02,731/) on the pretext that there was a "spontaneous combustion" at the plant of the

Corporate Debtor on 22.07.2021 due to which certain quantities of molasses were damaged which included the balance quantity of molasses that was allegedly earmarked for the OC. ln the said reply, the CD also alleged that the said damaged molasses has been auctioned, an approval letter has been issued by CD to the alleged buyer on 14.02.2022 and the salvage value of the balance quantity of Molasses of the OC was Rs. 13,13,886. It is claimed by the Appellant that the aforesaid narrative was never even mentioned of to the OC until the issuance of Demand Notice despite the said notice being preceded by 19 reminders communications.

43. Rebutting the claims of the Appellant, the Respondent has provided detailed background and claims that there is a pre-existing dispute between the CD and the OC and claims that no application for the initiation of corporate insolvency resolution process shall be filed in the event of existence of pre-existing dispute between the parties. It brings to our notice that the Appellant herein was permitted to lift the molasses pursuant to a no objection certificate which was issued to the Appellant by Molasses Controller & Excise Commissioner on 14th January 2021 for supply of said molasses to the Operational Creditor. As per the permission granted, the start date of lifting the molasses was 23rd January 2021 and the end date of lifting of Molasses was 11th February 2021. To its surprise the Respondent received an order dated 10th February 2021 from the office of the Molasses Controller & Excise Commissioner, whereby, Respondent was directed to immediately cease the sale of balance quantity of molasses to the Operational Creditor since they had violated the export terms by illegally exporting the products to Hamburg,

Germany instead of Singapore, the country for which the permission was sought from by the Appellant. It is claimed that not only the Appellant had played fraud upon the Statutory Authorities but it also played fraud upon the Respondent by making false representation regarding export of the Molasses. And in furtherance to the above, a formal order dated 28th February 2021 was also received by the Respondent from the office of the Molasses Controller & Excise Commissioner whereby, it was categorically stated the permission for lifting the balance quantity of 36228.65 Molasses by the Operational Creditor was immediately revoked due to export being done by the Appellant to a wrong country in violation of the permission given. In view of the above, on receipt of the aforementioned order dated 28th February 2021 from the Molasses Controller & Excise Commissioner as well as the failure of the Appellant to lift the balance quantity of 36228.65 quintals of molasses within the validity period (which is between 23rd January 2021 and 11th February 2021), the Corporate Debtor was constrained to issue a cancellation letter dated 6th March 2021 to the Appellant. In terms of the purchase order, the entire material was to be lifted between the period of 23.01.2021 to 07.02.2021. Despite the material (i.e. Molasses) being available for lifting, the Appellant only lifted part of the material during the said time period not for any fault of the Respondent and the said fact has not been disputed by the Appellant. The Respondent was in no position to permit the Appellant to continue to lift the molasses earmarked for the Appellant due to misdeeds of the Appellant. Respondent also brings to our notice that out that Molasses are by-product of sugar, sale of which is regulated through a statutory regime and permission for sale of Molasses (by a sugar mill) is granted by the Molasses Controller and Excise Commissioner only. The Respondent was holding on to the Molasses which was earmarked for the Appellant despite sending the cancellation letter dated 6th March 2021 to the Appellant (since Appellant violated the terms of the license issued by the Excise Commissioner who regulates the sale and purchase of Molasses) only upon the requests made by the Appellant. The Appellant despite assuring the Respondent that it is making all possible attempt to again procure necessary permission from the Molasses Controller & Excise Commissioner to restart lifting the balance quantity of Molasses, the Appellant was unable to get any such direction from the concerned authority. It is also brought to our notice that the Appellant herein did not address any letter / email to the Respondent seeking refund of any amount much less the amount being sought to recover by way of the petition filed under Section 9 of IBC before the NCLT from 6th March 2021 (when cancellation letter was sent by the Respondent) till 14th June 2021 when the Appellant first time addressed a letter to Respondent, interalia, seeking to recover Rs. 1,08,02,709/-. Only after 14th June, 2021 the Appellant started sending frivolous and malicious reminders seeking recovery of certain amount which was neither due nor payable.

44. It is also brought to our notice that while the Respondent herein was holding onto the molasses as per requests of the Appellant, there was an instance of spontaneous combustion followed by fire at the plant of the Respondent on the intervening night of 22nd July 2021 and a total quantity of 76130.35 quintal of molasses (which included the 36228.65 quintal of molasses earmarked for Operational Creditor) was damaged due to

combustion. The information of the said accident was duly provided by the Respondent to the Excise Officer (Uttar Pradesh) linked to the plant of the Respondent on the very next morning on the incident i.e. 23rd July 2021. It was also brought to our notice that the Respondent herein had even informed their Insurance Company about the said incident and· subsequently filed their insurance claim, however, the claim of the Respondent stood rejected by the concerned Insurance Company. It was also brought to our notice that the Insurance claim of the Respondent was duly submitted to the New India Assurance Co. Ltd., however, the same was rejected by the Insurance Company. Thereafter, a Consumer Complaint was filed by the Respondent (being Complaint No. CC/11/2024) before the Ld. District Consumer Dispute Redressal Commission, Baghpat, however, the Ld. District Consumer Dispute Redressal Commission, Baghpat instead of adjudicating the Complaint on merits, erroneously and without any application of mind rejected the legitimate and lawful Complaint filed by the Respondent vide Order dated 19.03.2024, interalia, observing that the Ld. District Consumer Dispute Redressal Commission, Baghpat does not have the necessary jurisdiction to adjudicate the claim of the Respondent. The said order dated 19.03.2024 was subsequently challenged by the Respondent before the Ld. State Consumer Redressal Commission, Lucknow, Uttar Pradesh who vide its Judgement dated 30.04.2024 allowed the Appeal filed by the Respondent herein and directed the Ld. District Consumer Dispute Redressal Commission, Baghpat to adjudicate the Complaint of the Respondent on merits. Thereafter an amount of Rs. 13,13,886/- was paid to the Appellant after sale of burnt molasses was carried out by the Insurance Company through an e-auction process (by an independent agency) under the supervision of Excise Commissioner (since Molasses is a controlled product and sale/purchase of same is done only through Excise Commissioner).

45. The Respondent also shares a brief working of the said amount paid by the Respondent as follows:

PARTICULARS	**AMOUNT (IN RS.)**
Total Balance with the Respondent (after adjusting the molasses already lifted against the total amount received)	1,08,02, 709.00
Less: Balance amount for molasses not lifted for Season 2019- 20 (12864.15 quintal @Rs. 450)	57,88,867.50
Less: Balance amount for molasses not lifted for Season 2020- 21 (9033.95 quintal @Rs. 555)	50,13,841.50
TOTAL QUANTITY NOT LIFTED: 21898.10 QUINTAL [12864.15 + 9033.95]	
SALVAGE VALUE @ Rs. 60 for Balance Quantity: 21898.10 quintal	13,13,886.00

46. It was also brought to our notice by the Respondent that the amount at which salvage was sold was finalized by way of an e-auction process, which was conducted through an independent body and the same was in no manner influenced by the Respondent herein. We also note that since molasses is classified as a controlled product, the sale and purchase of Molasses is conducted under the stringent supervision of the Molasses Controller and Excise Commissioner due to which the buyers for such products are not readily available and transactions cannot occur at any given time or day and

the controlled nature of molasses necessitates a regulated process, underscoring the Respondent's adherence to the requisite procedures and standards in such transactions.

47. We also note that, since the material (molasses), allocated for supply to the Appellant herein got destroyed in a spontaneous combustion accident at the plant of the Respondent and the fact that the Respondent has already refunded to the Appellant, the proportionate salvage value of the molasses destroyed, which amount has been accepted by the Appellant without demur or protest, therefore, filing of the petition under Section 9 IBC before the NCLT as well as the present Appeal to us appears to be a clever afterthought to extract more money from the Respondent.

48. The facts and circumstances of the case clearly indicate existence of pre-existing dispute. Section 9 read with Section 8 of the Code clearly bring out that that if there is an existence of dispute, the Section 9 application for CIRP will be rejected by the Adjudicating Authority. We note that the Hon'ble Supreme Court of India in the matter of **Mobilox Innovations Private Limited vs. Kirusa Software Private Limited, 2018 (1) SCC 353** has held that that whenever there is an existence of real dispute, the provisions of the IBC Code 2016 cannot be invoked. We find that there exists bonafide dispute between the parties i.e. the Appellant and the Respondent in the facts and circumstances of the case. Therefore, the petition filed by the Appellant loses its sanctity in the eyes of law and was rightly dismissed by the Impugned Order.

49. The appeal can be dismissed on the grounds of pre-existing dispute itself, as noted herein earlier by us. However, there is another dimension which has been brought before us which is being delved into herein after.

50. The Appellant raises a concern that whether the Corporate Debtor/Respondent (SBEC Sugar Limited) by unilaterally transferring some amounts to the Appellant/OC can intentionally reduce the operational debt below the threshold limit after the receipt of the demand notice, but before the filing of the application under Section 9 of the IBC. Herein the amount of default mentioned in the demand notice was Rs. 1,08,02,731/-. However, upon the receipt of the demand notice, the Respondent/Corporate Debtor unilaterally transferred an amount of Rs. 10,00,000/- and Rs. 3,13,886/-. It is claimed by the Appellant that this is a deliberate attempt of the Respondent with malafide intent to bring down the default amount of Rs. 1,08,02,731/- below the prescribed threshold of Rs.1 crore and evade the proceedings under the Code. Appellant contends that despite acknowledging the aforementioned fraudulent attempt, the AA rejected the Section 9 petition filed by the Operational Creditor (OC) on the grounds of threshold. Appellant contends that the broader issue raised is whether a corporate debtor, by attempting to circumvent the provisions of the IBC through allegedly fraudulent means of unilaterally reducing the operational debt below the threshold, can be allowed to take advantage of its own wrongdoing and plead the bar of the threshold requirement.

51. Rebutting the contentions of the Appellant, the Respondent brings to our notice that admittedly the statutory notice under Section 8 of the Code

was issued by the Appellant herein on 31.05.2022. However, the petition under Section 9 IBC was filed on 20.08.2022 which is the 'initiation date' of the proposed insolvency proceedings. The claim of the Appellant on the 'initiation date' is Rs. 94,88,845/- (Rupees Ninety Four Lakhs Eighty Eight Thousand Eight Hundred Forty Five Only) which is less than the threshold limit of Rs. 1 Crore as defined under Section 4 (1) IBC which is necessary for maintaining a petition under Section 9 of the Code. This fact has been admitted by the Appellant in its petition and has been duly recorded in the Impugned Judgement. We note that under Section 9 of the Code, the Operational Creditor is entitled to file an application for initiation of Corporate Insolvency Resolution Process (CIRP) provided the quantum of default / debt is Rs. 1 Crore or above as is mandated under Section 4 (1) of IBC as also, there is no pre-existing dispute between the Operational Creditor and the Corporate Debtor.

52. We also note that the Section 5 (11) of IBC clarifies that the 'initiation date' for initiating Corporate Insolvency Resolution Process is the date when a petition is filed by a Financial Creditor or Operational Creditor or Corporate Applicant under Section 7, 9 and 10.

53. Furthermore, we note that the mandatory threshold limit of Rs. 1 Crore as defined under Section 4(1) of IBC necessary for maintaining a petition before the NCLT under Section 7, 9 and 11 of IBC is to be ascertained on the date of filing of the said petition i.e. the 'initiation date' as is defined under Section 5 (11) of IBC and not on the date of sending of the Demand Notice under Section 8 of IBC. We note that the date of sending the Demand Notice

under Section 8 IBC is of no relevance as far as ascertaining the threshold limit is concerned, since the scheme of Code clearly establishes that the threshold limit for instituting a petition under Section 9 of IBC on the date of filing of such petition shall be Rs. 1 Crore or above and not the date of sending the Demand Notice under Section 8 of IBC. Furthermore, it is a fact that it is Part II of the IBC (which deals with Insolvency Resolution and Liquidation for Corporate Person) which will only come into operation if the Operational Creditor (Appellant herein) meets the minimum threshold of Rs. 1 Crore after 24.03.2020, meaning thereby, there is no right to initiate Corporate Insolvency Resolution Process after 24.03.2020 when minimum default is admittedly less than Rs. 1 Crore and therefore the petition filed by the Appellant herein was rightly rejected vide Impugned Order.

54. Thus, it is clear from the combined reading of Section 4 (1), Section 5 (11) and Section 9 of IBC that in the event, the Operational Creditor does not meet the minimum threshold of Rs. 1 Crore, as is mandated under Section 4 of the Code on the initiation date as defined under Section 5 (11) of the Code - a petition under Section 9 of IBC cannot be maintained before the NCLT. That doesn't mean that the Operational Creditor is left remedy less and it is open for Operational Creditor to approach appropriate fora and can agitate its alleged right of recovery under appropriate law.

55. NCLT, Allahabad rejected the claim of the Appellant, interalia, on the following grounds amongst other:

(a) The claim of the Appellant on the initiation date is less than the threshold limit of Rs. 1 Crore as defined under

Section 4 (1) of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred as 'IBC') which is necessary for maintaining a petition under Section 9 of the Code.

(b) The date of filing of the petition before the NCLT under Section 9 of IBC needs to be considered for ascertaining the mandatory threshold limit of Rs. 1 Crore as defined under Section 4 (1) of IBC and not the date of sending the demand notice under Section 8 of IBC.

(c) That date of filing of a petition under Section 7, 9 and 10 of IBC before the NCLT is the 'initiation date' as is defined under Section 5 (11) of IBC and not the date when Notice under Section 8 of IBC was sent by the Appellant. Further, the threshold limit of Rs. 1 Crore for maintaining a petition before the NCLT shall be considered from the initiation date i.e. when petition is filed under Section 7, 9 and 10 of IBC and not the date when Notice under Section 8 of IBC was sent.

(d) The operational debt on the date of filing of the petition before the NCLT by the Appellant herein admittedly was Rs. 94,88,845/- which is below the mandatory threshold limit of Rs. 1 Crore as provided under the provisions of IBC and therefore the petition filed by the Appellant is not maintainable.

(e) The Appellant is not justified in claiming interest at the rate of 24% per annum till the date of payment of the total amount of the debt as mentioned in Part IV of the Section 9 petition filed on account of the fact that there is no agreement between the Appellant and the Respondent for payment of interest on delay of refunding of advance money, if any.

(f) NCLT has also recorded in the impugned judgement that it is an undisputed fact (not opposed / rebutted in the rejoinder to the Section 9 petition as well as rejoinder to the Notice sent under Section 8) that the Appellant has failed to lift the molasses within the agreed time period i.e. by 07.02.2021.

56. In the facts and circumstances of the case we find that the alleged Operational Debt is not above Rs. 1 Crore and additionally there is a pre-existing dispute between the parties as noted by us herein earlier- due to which the petition filed by the Appellant is not maintainable and therefore we don't find any infirmity in the order of the Adjudicating Authority in its rejection.

Orders

57. Accordingly, the Appeal is dismissed. All IAs are also disposed of. Parties to bear their own cost.

[Justice N Seshasayee]
Member (Judicial)

[Arun Baroka]
Member (Technical)

[Indevar Pandey]
Member (Technical)

New Delhi.
February 25, 2026.

Pawan