

**NATIONAL COMPANY LAW APPELLATE TRIBUNAL,  
PRINCIPAL BENCH, NEW DELHI**

**Company Appeal (AT) (Insolvency) No. 197 of 2022**

[Arising out of Order dated 15.11.2021 passed by the Adjudicating Authority (National Company Law Tribunal), New Delhi Bench (Court-II) in (IB)-932(ND)2020]

**In the matter of:**

**Drive India Enterprise Solutions Ltd. ...Appellant**  
**Through Its Authorized Representative**  
**Vs.**

**Essline Engineers and Consultants Pvt. Ltd. ...Respondent**

**For Appellant: Mr. Jitender Chaudhary, Ms. Shilpa Chohan and  
Ms. Aditi Tripathi, Advocates.**

**For Respondent: Mr. Sidharth Datta and Mr. Pratyush Singh,  
Advocates.**

**J U D G M E N T**

**(25<sup>th</sup> February, 2026)**

**Ashok Bhushan, J.**

This Appeal by the Appellant has been filed challenging the order dated 15.11.2021 passed by the Adjudicating Authority (National Company Law Tribunal) New Delhi Bench (Court-II) dismissing Section 9 application filed by the Appellant. The Appellant aggrieved by the dismissal order has filed this Appeal.

2. Brief facts giving rise to the Appeal are:-

2.1. Appellant executed High Sea Sale Agreement with the Respondent-Corporate Debtor between 01.02.2017 to 08.03.2018 with regard to supply of

goods (products being mobile parts and batteries). The Corporate Debtor is subsidiary company of one BTM Exports Limited. Appellant shared balance confirmation sheet with the Corporate Debtor showing outstanding dues. Reference of balance confirmation dated 23.04.2018 has been made. Transaction with the Corporate Debtor was as per Master Agreement with BTM Exports Limited. Appellant claim to have sent e-mail to both Corporate Debtor and BTM Exports Limited for its pending dues. Operational Creditors issued a demand notice dated 11.12.2019 to the Corporate Debtor- M/s. Essline Engineers and Consultants Pvt. Ltd. claiming amount of Rs.7,41,39,165/-. The demand notice dated 11.12.2019 was replied by the Corporate Debtor vide its reply dated 19.12.2019 disputing the claim of the Operational Creditor. It was pleaded in the reply to the demand notice that as per account confirmations sent by Operational Creditor there is no sum due. It was pleaded that there have been business relations to the Operational Creditor and Corporate Debtor. The account reconciliation shows that no sum is due from Corporate Debtor to Operational Creditor. Account statement sent along with the demand notice was stated to be ambiguous and not clear. Corporate Debtor undertook to furnish all necessary evidence to support the claim of the Corporate Debtor. After receipt of the reply to demand notice, the Operational Creditor filed Section 9 application in July 2020 claiming an amount of Rs.7,83,79,478/-. In Part IV, no date of default was mentioned. On 18.09.2020, Adjudicating Authority issued notice to the Corporate Debtor. On 18.01.2021, Corporate Debtor filed its reply disputing existence of operational debt. Corporate Debtor in its reply relied on the letter dated 04.10.2018 sent by the Corporate Debtor to Operational Creditor regarding adjustment of

outstanding balance with BTM Exports Limited of Rs.3,99,47,076.92/-. It was pleaded that the aforesaid adjustment was reflected in the ledgers of the Corporate Debtor as well as BTM Exports Limited. It is pleaded that no amount is due from the Corporate Debtor as per ledger. Corporate Debtor relied on its reply to demand notice by which it has already disputed the claim. Adjudicating Authority after noticing the letter dated 23.04.2018 sent by Operational Creditor to the Corporate Debtor, letter dated 04.10.2018 sent by Corporate Debtor to Operational Creditor and the letter sent by Operational Creditor to BTM Exports Limited noted ledgers account submitted by the parties. Adjudicating Authority also noticed the notice of dispute dated 19.12.2019 sent by Corporate Debtor referring to the communication dated 23.04.2018, 04.10.2018 and 24.10.2018 relied by the Corporate Debtor which were much prior to issuance of demand notice dated 11.12.2019. Adjudicating Authority came to the conclusion that voluminous documents and multiple communications between the parties raised a plausible contention, which require further investigation. Relying on the judgment of the Hon'ble Supreme Court in **"Mobilox Innovations Pvt. Ltd. vs. Kirusa Software Pvt. Ltd.- Civil Appeal No.9405 of 2017"** Section 9 application has been dismissed aggrieved by which order this Appeal has been filed.

3. Learned Counsel for the Appellant in support of the Appeal contends that the Corporate Debtor has confirmed the balance confirmation issued by the Operational Creditor on 23.04.2018 of Rs.93733173/- and unilateral adjustment of Rs.3,99,47,076.92/- by letter dated 04.10.2018 of the Corporate Debtor was never accepted. The said letter asked the Operational Creditor to duly sign and acknowledgment for the said transaction which was

never given by the Operational Creditor, hence, unilateral adjustment of the above amount was never agreed by the Operational Creditor. Summary of claims have already been filed along with the application. Corporate Debtor has sent reminders on 14.11.2018 and 09.01.2021 to the Operational Creditor to send acknowledgment of the adjustment of amount of Rs.3,99,47,076.92/- which was never answered. It is submitted that unilateral adjustment by letter dated 04.10.2018 cannot be accepted and Adjudicating Authority committed error in observing that Operational Creditor has never denied the adjustment. The opening ledger balance of the Corporate Debtor as on 01.04.2018 of Rs.93733173.01/- which tallies with the amount mentioned by Operational Creditor in balance confirmation letter dated 23.04.2018. Observation of the Adjudicating Authority that business relation amongst the Operational Creditor, the Corporate Debtor and BTM Exports Pvt. Ltd. is not clear, it is submitted that the business relationship of Operational Creditor, the Corporate Debtor and BTM Exports Pvt. Ltd. is irrelevant in the present transaction. It is submitted that the written submissions were filed by the Operational Creditor before the Adjudicating Authority which had not been correctly looked into. The finding of the Adjudicating Authority that the communication referred to in paragraph 11 raises a dispute is untenable. Absence of express denial does not automatically create a pre-existing dispute regarding the debt. The amount of Rs.7,77,78,667/- is total sum of BTM, individual debt of Corporate Debtor is Rs.3,22,84,416/-.

4. Learned Counsel for the Respondent refuting the submission of the Counsel for the Appellant submits that the Adjudicating Authority has rightly

taken the view that disputed question of fact having arisen between the parties which is beyond the summary jurisdiction of the Adjudicating Authority. It is submitted that the Adjudicating Authority has rightly dismissed the application relying on judgment of the Hon'ble Supreme Court in "**Mobilox Innovations Pvt. Ltd.**" (supra). It is submitted that the Corporate Debtor had issued notice of dispute vide its reply dated 19.12.2019. Notice of dispute having been issued, the application under Section 9 could not have been entertained. Part IV of the application does not mention any date of default, petition was not maintainable. All correspondences post March 2018 and particularly post issue of audit confirmation letter issued by CA of Operational Creditor dated 23.04.2018 were concealed by Operational Creditor. The dues are owed by the Appellant to BTM is stand confirmed by its own audit confirmation letter dated 23.04.2018 which has been noticed by the Adjudicating Authority also. Letter dated 04.10.2018 was sent by the Corporate Debtor to Operational Creditor as adjustment outstanding balance with BTM Exports Limited. Ledgers of BTM Exports Limited and Corporate Debtor for period of 01.04.2018 to 30.09.2018 were sent to Operational Creditor. Both entries were placed on record by reply to the original claim petition. The Operational Creditor asked the Corporate Debtor to send the ledgers in excel format which was sent by Corporate Debtor. As on 24.09.2018, amount of Rs.5,85,67,489.84/- was due and after adjustment of Rs.3,99,47,076.92/-, there was due of only Rs.1.86 Crore against which Operational Creditor purchased material against two invoices issued by Corporate Debtor dated 21.12.2018 and in view of the above two invoices, no amount was due. The Corporate Debtor successfully has proved by its ledger

entries and other documents that no amount is due on the Corporate Debtor. The claim of Operational Creditor was never admitted by the Corporate Debtor which was pleaded both in reply to demand notice as well as reply to Section 9 application. Reply to Section 9 application contains all relevant materials which were concealed by Operational Creditor in Section 9 application. Adjudicating Authority, thus, rightly has dismissed the application filed by Operational Creditor.

5. We have considered the submissions of Counsel for the parties and perused the record.

6. The demand notice was issued on 11.12.2019 by the Operational Creditor claiming an amount of Rs.7,41,39,165/-. Demand notice was disputed and reply to demand notice dated 19.12.2019 was sent by the Corporate Debtor which is brought on the record as Annexure A12 to the Appeal. In paragraphs 2, 3, 4 and 5 of the reply to the demand notice, following was stated:-

*“2. At the outset, we completely brush aside all the allegations made against us. It is submitted that the aforesaid claim made is false and frivolous. We have been repeatedly communicating over emails and telecom that there is no due whatsoever from us to you*

*3. Even the account confirmations sent by you clearly states that there is no sum due whatsoever from us. In fact we were in a state of shock and surprise to receive the captioned notice from your office demanding an alleged sum of Rs. 7,41,39,165/-.*

*4. We have been into business relations since a long time and have been reconciling our accounts from time to time. The account reconciliation clearly shows that no sum is due from us to you.*

*5. Further the account statement sent by you along with the notice is ambiguous and not clear about the contents. Also the notice does not contain all the supporting documents referred by you in the demand notice.”*

7. Thus, present is a case where notice of dispute within the meaning of Section 8/9 was sent by the Corporate Debtor. The reply to Section 9 application was also filed by the Respondent where copy of ledgers and balance confirmation was annexed. Correspondences between the parties regarding balance confirmation were brought on the record. Along with the reply the Corporate Debtor has filed copy of the letter dated 04.10.2018 which was sent by Corporate Debtor for account adjustment of BTM Exports Limited and the response received by the Appellant. Appellant's case itself is that M/s. Essline Engineers and Consultants Pvt. Ltd. is subsidiary company to BTM Exports Limited. Adjudicating Authority in the impugned order has already extracted the letter which was written by the Operational Creditor to BTM Exports Limited on 23.04.2018 where according to own case of the Appellant Operational Creditor i.e. Appellant owed amount to BTM Exports Limited. Thus, it is an admitted fact that Operational Creditor owed amount to BTM Exports Limited. Letter dated 04.10.2018 has also been extracted by the Adjudicating Authority in paragraph 7(iii) where Corporate Debtor has written to the Operational Creditor regarding account adjustment of

Rs.3,99,47,076.92/- . Letter dated 04.10.2018 as noted by the Adjudicating Authority is as follows:-

*“Dated: 04/10/2018*

*To,*

*M/s. Drive India Enterprise Solutions Ltd.  
7, Kamila Executive Park, Off. Andheri Kuria Road,  
Andheri East, Mumbai-400059.*

*Sub.: Adjustment of outstanding balance in your account  
with M/s. BTM Exports Lad.*

*Kind Attn.: Mr. Prathamesh Sontakke*

*Dear Sir,*

*We have been requested by M/s BTM Exports Ltd. to give them credit of Rs. 3,99,47,076.92 (Rs. Three Crore Ninty Nine Lac Fourty Seven Thousand Seventy Six and Paise Ninty Two Only) by debiting the aforesaid amount to your account which is receivable by them from you as on 30.09.2018. As per the request of the said M/s. BTM Exports Ltd, we have debited your account for a sum of Rs. 1,99,47,076.92 by crediting the account of M/s. BTM Exports Ltd. for the same amount.*

*You are therefore hereby requested to please credit our account in your books for a sum of Rs.3,99,47,076.92 (Rs. Three Crore Ninty Nine Lac Fourty Seven Thousand Seventy Six and Paise Ninty Two Only) by making debit to the account of aforesaid M/s. BTM Exports Ltd. accordingly and provide as your duly signed and stamped acknowledgement for aforesaid transaction.*

*Thanking you,*

*For Essline Engineers and Consultants Pvt Ltd.”*

8. The Corporate Debtor has given adjustment in the account of the Operational Creditor of the aforesaid amount. It is also relevant to notice that the letter dated 04.10.2018 sent by the Corporate Debtor to Operational Creditor which was replied by Operational Creditor on 23.10.2018. Reply dated 23.10.2018 sent by Operational Creditor is as follows:-

*“Tue, Oct 23, 2018 at 12:30 PM*

*Prathamesh Sontakke <ac3.sds@driveindia.co.in>*

*To: lokesh <lokesh@essline.co.in>*

*Cc: "Sanjeevtekriwal@btmindia.com" <Sanjeevtekriwal@btmindia.com>, tushartekriwal <tushar.tekriwal@essline.com>*

*Dear Lokesh ji,*

*Kindly share ledger in excel format*

*Regards*

*Prathamesh Sontakke”*

9. On 24.10.2018 i.e. on the next date, the Corporate Debtor has sent the ledger in excel format which is also part of the record. One of the submissions which has been raised by Counsel for the Appellant is that there can be no question of unilateral adjustment of any amount by Corporate Debtor even it is due to M/s BTM Exports Ltd. Present was a case where in both ledgers of Corporate Debtor and M/s. BTM Exports Ltd., the liability of the Operational Creditor to M/s. BTM Exports Ltd. has been adjusted and adjustment letter dated 04.10.2018 was shared with the Appellant and Appellant acknowledged the said letter and has only sent a response that “kindly share ledger in excel format” which ledger was submitted in excel format. Thus, it is not open for

the Appellant to contend that there was any unilateral adjustment of the account. According to the own case of the Appellant as on 24.09.2018, the Corporate Debtor owed the amount of Rs.5,85,67,489.84/- which was admitted by Operational Creditor in its rejoinder-affidavit as has been noted in paragraph 7 (vi) to the following effect:-

*“vi) That the Ledger of Corporate Debtor at Page no. 86 and 87 of their Reply begins with the corresponding entry of Rs.9,37,33,173.01/ which is as per the Audit Confirmation Letter issued by the Operational Creditor dated 23.04.2018 (Annexure A-7 Page 121) and records further back-back sales transactions between the parties up to the further confirmed amount of Rs.5,85,67,489.84/ (as on 24.09.2018 admitted by Operational Creditor as 30.09.2018 as per Page 43 of the Reply of Corporate Debtor), which is also admitted by the Operational Creditor in its Rejoinder at Para No. 5.6 at Page 15. Thereafter, the 'account adjustment letter' for an amount of Rs. 3,99,47,076.92 dated 04.10.2018 was further admitted as a 'standalone' instance of an adjustment/set off request between the Operational Creditor and Corporate Debtor' at Para No. 5.6 at Page 15 of the Rejoinder itself. ....”*

10. The Adjudicating Authority while noticing the submission of the Operational Creditor has also noted that the outstanding balance of Rs.5.85 Crores was clearly adjusted with Rs.3.99 Crores in terms of the letter dated 04.10.2018 and the balance of Rs.1.86 Crore of the two invoices 21.12.2018 of Rs.84.91 lakhs and Rs.1.01 Crore which has been noticed in paragraph 8(iv) of the impugned order. Thus, the Corporate Debtor has brought sufficient materials which were supported by the ledger to prove that there are no dues

payable by the Corporate Debtor. In any event materials brought by the Corporate Debtor were sufficient to dispel the claim of the Appellant dues and has raised plausible contention which require further investigation and adjudication. It is further relevant to notice that the prior to demand notice which were issued on 11.12.2019 there has been several correspondences between the parties regarding balance confirmation, account adjustment by letter dated 04.10.2018 exchange of ledgers which all took place much before issuance of demand notice. The above clearly indicate that there was pre-existing dispute between the parties regarding amount claimed by the Appellant from the Corporate Debtor. The finding returned by the Adjudicating Authority in paragraph 14, as noted above, were based on materials on record, documents, ledgers filed by both the parties. Adjudicating Authority has relied on the judgment of the Hon'ble Supreme Court in "**Mobilox Innovations Pvt. Ltd.**" (supra) where Hon'ble Supreme Court in paragraph 40 has laid down following:-

*"40 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.”*

11. The Hon’ble Supreme Court in subsequent judgment has reiterated the judgment of **“Mobilox Innovations Pvt. Ltd.”** (supra) and further has laid down that Section 9 application cannot be admitted when any plausible contention is raised by the Corporate Debtor in his defence which cannot be said to be moonshine unsupported by evidence. The Hon’ble Supreme Court in **“Transmission Corporation of Andhra Pradesh Limited vs. Equipment Conductors and Cables Limited- (2019) 12 SCC 697”** has laid down following in Paragraph 19:-

*“19. In a recent judgment of this Court in Mobilox Innovations (P) Ltd. v. Kirusa Software (P) Ltd. [Mobilox Innovations (P) Ltd. v. Kirusa Software (P) Ltd., (2018) 1 SCC 353 : (2018) 1 SCC (Civ) 311] , this Court has categorically laid down that IBC is not intended to be substitute to a recovery forum. It is also laid down that whenever there is existence of real dispute, the IBC provisions cannot be invoked. We would like to reproduce the following discussion from the said judgment: (SCC pp. 392-95, 398 & 402, paras 33-34, 37, 42-45 & 51)*

*“33. The scheme under Sections 8 and 9 of the Code, appears to be that an operational creditor, as defined, may, on the occurrence of a default (i.e. on non-payment of a debt, any part whereof has become due and payable and has not been repaid), deliver a demand notice of such unpaid operational debt or deliver the copy of an invoice demanding payment of such amount to the corporate debtor in the form set out in Rule 5 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 read with Form 3 or 4, as the case may be [Section 8(1)]. Within a period of 10 days of the receipt of such demand notice or copy of invoice, the corporate debtor must bring to the notice of the operational creditor the existence of a dispute and/or the record of the pendency of a suit or arbitration proceeding filed before the receipt of such notice or invoice in relation to such dispute [Section 8(2)(a)]. What is important is that the existence of the dispute and/or the suit or arbitration proceeding must be pre-existing i.e. it must exist before the receipt of the demand notice or invoice, as the case may be. In case the unpaid operational debt has been repaid, the corporate debtor shall within a period of the selfsame 10 days send an attested copy of the record of the electronic transfer of the unpaid amount from the bank account of the corporate debtor or send an attested copy of the record that the operational creditor has encashed a cheque or otherwise received payment from the corporate debtor [Section 8(2)(b)]. It is only if, after the expiry of the period of the said 10 days, the operational creditor does not either receive payment from the corporate debtor or notice of dispute, that the operational creditor may trigger the insolvency process by filing an application before the adjudicating authority under Sections 9(1) and 9(2). This application is*

*to be filed under Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 in Form 5, accompanied with documents and records that are required under the said form. Under Rule 6(2), the applicant is to dispatch by registered post or speed post, a copy of the application to the registered office of the corporate debtor. Under Section 9(3), along with the application, the statutory requirement is to furnish a copy of the invoice or demand notice, an affidavit to the effect that there is no notice given by the corporate debtor relating to a dispute of the unpaid operational debt and a copy of the certificate from the financial institution maintaining accounts of the operational creditor confirming that there is no payment of an unpaid operational debt by the corporate debtor. Apart from this information, the other information required under Form 5 is also to be given. Once this is done, the adjudicating authority may either admit the application or reject it. If the application made under sub-section (2) is incomplete, the adjudicating authority, under the proviso to sub-section (5), may give a notice to the applicant to rectify defects within 7 days of the receipt of the notice from the adjudicating authority to make the application complete. Once this is done, and the adjudicating authority finds that either there is no repayment of the unpaid operational debt after the invoice [Section 9(5)(i)(b)] or the invoice or notice of payment to the corporate debtor has been delivered by the operational creditor [Section 9(5)(i)(c)], or that no notice of dispute has been received by the operational creditor from the corporate debtor or that there is no record of such dispute in the information utility [Section 9(5)(i)(d)], or that there is no disciplinary proceeding pending against any resolution professional proposed by the operational creditor [Section*

9(5)(i)(e)], it shall admit the application within 14 days of the receipt of the application, after which the corporate insolvency resolution process gets triggered. On the other hand, the adjudicating authority shall, within 14 days of the receipt of an application by the operational creditor, reject such application if the application is incomplete and has not been completed within the period of 7 days granted by the proviso [Section 9(5)(ii)(a)]. It may also reject the application where there has been repayment of the operational debt [Section 9(5)(ii)(b)], or the creditor has not delivered the invoice or notice for payment to the corporate debtor [Section 9(5)(ii)(c)]. It may also reject the application if the notice of dispute has been received by the operational creditor or there is a record of dispute in the information utility [Section 9(5)(ii)(d)]. Section 9(5)(ii)(d) refers to the notice of an existing dispute that has so been received, as it must be read with Section 8(2)(a). Also, if any disciplinary proceeding is pending against any proposed resolution professional, the application may be rejected [Section 9(5)(ii)(e)].

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.*

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*37. It is now important to construe Section 8 of the Code. The operational creditors are those creditors to whom an operational debt is owed, and an operational debt, in turn, means a claim in respect of the provision of goods or services, including employment, or a debt in respect of repayment of dues arising under any law for the time being in force and payable to the Government or to a local authority. This has to be contrasted with financial debts that may be owed to financial creditors, which was the subject-matter of the judgment delivered by this Court on 31-8-2017 in *Innoventive Industries Ltd. v. ICICI Bank [Innoventive Industries Ltd. v. ICICI Bank, (2018) 1 SCC 407 : (2018) 1 SCC (Civ) 356]*. In this judgment, we had held that the adjudicating authority under Section 7 of the Code has to ascertain the existence of a default from the records of the information utility or on the basis of evidence furnished by the financial creditor within 14 days. The corporate debtor is entitled to point out to the adjudicating authority that a default has not occurred; in the sense that a debt, which may also include a disputed claim, is not due i.e. it is not payable in law or in fact. This Court then went on to state: (SCC p. 440, paras 29-30)*

*‘29. The scheme of Section 7 stands in contrast with the scheme under Section 8 where an operational creditor is,*

*on the occurrence of a default, to first deliver a demand notice of the unpaid debt to the operational debtor in the manner provided in Section 8(1) of the Code. Under Section 8(2), the corporate debtor can, within a period of 10 days of receipt of the demand notice or copy of the invoice mentioned in sub-section (1), bring to the notice of the operational creditor the existence of a dispute or the record of the pendency of a suit or arbitration proceedings, which is pre-existing — i.e. before such notice or invoice was received by the corporate debtor. The moment there is existence of such a dispute, the operational creditor gets out of the clutches of the Code.*

*30. On the other hand, as we have seen, in the case of a corporate debtor who commits a default of a financial debt, the adjudicating authority has merely to see the records of the information utility or other evidence produced by the financial creditor to satisfy itself that a default has occurred. It is of no matter that the debt is disputed so long as the debt is “due” i.e. payable unless interdicted by some law or has not yet become due in the sense that it is payable at some future date. It is only when this is proved to the satisfaction of the adjudicating authority that the adjudicating authority may reject an application and not otherwise.’*

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*42. This being the case, is it not open to the adjudicating authority to then go into whether a dispute does or does not exist?*

*43. It is important to notice that Section 255 read with the Eleventh Schedule of the Code has amended Section 271 of the Companies Act, 2013 so that a company being unable to pay its debts is no longer a ground for winding up a company. The old law contained*

in *Madhusudan [Madhusudan Gordhandas & Co. v. Madhu Woollen Industries (P) Ltd., (1971) 3 SCC 632]* has, therefore, disappeared with the disappearance of this ground in Section 271 of the Companies Act.

44. We have already noticed that in the first Insolvency and Bankruptcy Bill, 2015 that was annexed to the Bankruptcy Law Reforms Committee Report, Section 5(4) defined “dispute” as meaning a ‘bona fide suit or arbitration proceedings...’. In its present avatar, Section 5(6) excludes the expression “bona fide” which is of significance. Therefore, it is difficult to import the expression “bona fide” into Section 8(2)(a) in order to judge whether a dispute exists or not.

45. The expression “existence” has been understood as follows:

‘Shorter Oxford English Dictionary gives the following meaning of the word “**existence**”:

(a) Reality, as opp. to appearance.

(b) The fact or state of existing; actual possession of being. Continued being as a living creature, life, esp. under adverse conditions.

Something that exists; an entity, a being. All that exists. (Page 894, Oxford English Dictionary)’

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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)(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.”*

*(emphasis in original)”*

12. Further, the Hon’ble Supreme Court in **“Kay Bouvet Engg. Ltd. v. Overseas Infrastructure Alliance (India) (P) Ltd., (2021) 10 SCC 483”** has laid down following in paragraphs 19 and 21:-

*“19. It could thus be seen that this Court has held that one of the objects of IBC qua operational debts is to ensure that the amount of such debts, which is usually smaller than that of financial debts, does not enable operational creditors to put the corporate debtor into the insolvency resolution process prematurely or initiate the process for extraneous considerations. It has been held that it is for this reason that it is enough that a dispute exists between the parties.*

*21. It is thus clear that once the operational creditor has filed an application which is otherwise complete, the adjudicating authority has to reject the application under*

*Section 9(5)(ii)(d) IBC, if a notice has been received by operational creditor or if there is a record of dispute in the information utility. What is required is that the notice by the corporate debtor must bring to the notice of operational creditor the existence of a dispute or the fact that a suit or arbitration proceedings relating to a dispute is pending between the parties. All that the adjudicating authority is required to see at this stage is, whether there is a plausible contention which requires further investigation and that the dispute is not a patently feeble legal argument or an assertion of fact unsupported by evidence. It is important to separate the grain from the chaff and to reject a spurious defence which is a mere bluster. It has been held that however, at this stage, the Court is not required to be satisfied as to whether the defence is likely to succeed or not. The Court also cannot go into the merits of the dispute except to the extent indicated hereinabove. It has been held that so long as a dispute truly exists in fact and is not spurious, hypothetical or illusory, the adjudicating authority has no other option but to reject the application.”*

13. The Hon’ble Supreme Court in subsequent judgment **“M/s. S.S. Engineering vs. Hindustan Petroleum Corporation Ltd. & Ors.- Civil Appeal No.4583 of 2022”** has held that Section 9 application can be admitted only when there is undisputed debt. In paragraph 32 of the judgment, following was laid down:-

*“32. There are noticeable differences in the IBC between the procedure of initiation of CIRP by a financial creditor and initiation of CIRP by an operational creditor. On a reading of Sections 8 and 9 of the IBC, it is patently clear that an Operational Creditor can only trigger the CIRP*

*process, when there is an undisputed debt and a default in payment thereof. If the claim of an operational creditor is undisputed and the operational debt remains unpaid, CIRP must commence, for IBC does not countenance dishonesty or deliberate failure to repay the dues of an Operational Creditor. However, if the debt is disputed, the application of the Operational Creditor for initiation of CIRP must be dismissed.”*

14. In view of the law laid down by the Hon'ble Supreme Court as noted above, the Adjudicating Authority did not commit any error in holding that the Corporate Debtor has raised plausible contention. The present is a case where notice of dispute was issued by the Corporate Debtor immediately after receiving of the demand notice and materials brought in reply to Section 9 application clearly proves that the plea raised by the Corporate Debtor that it does not owe any amount to the Appellant was supported by its ledgers. In any view of the matter, there was correspondences between the parties as noted above which clearly reflect the pre-existing dispute between the parties. We thus, do not find any error in the order of the Adjudicating Authority rejecting Section 9 application filed by the Appellant. The appeal is dismissed.

**[Justice Ashok Bhushan]  
Chairperson**

**[Barun Mitra]  
Member (Technical)**

**New Delhi**

**Anjali**