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

**Company Appeal (AT) (Insolvency) No. 2077 of 2024**

**[Arising out of the Order dated 05.09.2024, passed by the 'Adjudicating Authority' (National Company Law Tribunal, New Delhi Bench) in CP (IB) No. 882/ND/2022)]**

**IN THE MATTER OF:**

**Reliance Realty Limited**
Registered Office at:
H- Block, 1st Floor
Dhirubhai Ambani Knowledge City
Navi Mumbai- 400710 **...Appellant/ Operational Creditor**

**Versus**

**Altruist Customer Management India Pvt. Ltd.**
Formerly known as Vertex Customer
Management India Private Ltd
Registered Office at:
151/B, Block CC, Shalimar Bagh,
North West, New Delhi – 110088 **...Respondent/ Corporate Debtor**

**Present:**

**For Appellant** : Mr. Krishnendu Datta, Sr. Advocate with Mr. Vaijayant Paliwal, Mr. Nikhil Mathur, Ms. Tanya Chib and Ms. Alina Merin Mathew, Advocates.

**For Respondent** : Mr. Vishal Sharma, Sr. Standing Counsel and Mr. Manjit Singh, Advocates

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

**[Per: Arun Baroka, Member (Technical)]**

The present Appeal has been filed on behalf of [1]Reliance Realty Limited ("Appellant/Operational Creditor") under Section 61 of the Insolvency and

[1] Appellant - Operational Creditor: Reliance Realty Limited

Bankruptcy Code, 2016 ("Code") assailing the order dated 05 September 2024 ("Impugned Order") passed by Ld. National Company Law Tribunal, New Delhi Bench ("Adjudicating Authority") in an application filed by the Appellant under Section 9 of the Code (bearing number CP (IB) No. 882/ND/2022) ("Section 9 Application") seeking for Initiation of Corporate Insolvency Resolution Process ("CIRP") against [2]Altruist Customer Management India Private Limited, ("Corporate Debtor").

2. A petition CP (IB) No. 882/ND/2022) was filed by Reliance Reality Ltd. (Operational Creditor) to initiate Corporate Insolvency Resolution Process (CIRP) against Altruist Customer Management India Pvt. Ltd. (Corporate Debtor), under Section 9 of the Insolvency and Bankruptcy Code for a total outstanding amount of Rs.24,34,59,787 before National Company Law Tribunal, New Delhi Bench. The Appellant had filed the Section 9 Petition on account of operational debt i.e., rental dues during the period between May 2019 to September 2022 (before filing of the Section 9 Petition) owed by the Corporate Debtor to the Appellant ("Default Period") for possession and occupation of Building No. A-8 situated in Sector 1, Plot No. MBP-2 at TTC Industrial area within the limits of Vill Mahape and Dist. Thane, Maharashtra 400710 comprising of ground plus 3 upper floors each admeasuring 11566 sq. mtrs. equivalent to 12447 sq. ft. ("Premises") under the License Agreement dated 29 March 2019 ("License Agreement"). NCLT Delhi dismissed the section 9 application inter alia on the grounds of pre-existing dispute between

[2] Respondent -Corporate Debtor: Altruist Customer Management India Private Limited

the parties relating to the question of percentage of debt liable to be paid to the Appellant by the CD as per the license agreement.

**Submissions of the [3]Appellant/Operational Creditor-RRL**

3. The Appellant had filed the Section 9 Petition before the AA on account of operational debt i.e., rental dues during the period between May 2019 to September 2022 (before filing of the Section 9 Petition) owed by the [4]Corporate Debtor – Altruist Customer Management India Pvt. Ltd. (ACMIPL) to the Appellant - Reliance Realty Limited (RRL) for possession and occupation of Building No. A-8 situated in Sector 1, Plot No. MBP-2 at TTC Industrial area within the limits of Vill Mahape and Dist. Thane, Maharashtra - 400710 comprising of ground plus 3 upper floors each admeasuring 11566 sq .mtrs. equivalent to 12447 sq. ft. ("Premises") under the License Agreement dated 29 March 2019 ("License Agreement").

4. Section 9 Petition was dismissed on 05.09.2024 by the Adjudicating Authority on the ground of purported pre-existence of dispute over the operational debt payable by the Corporate Debtor to the Appellant on an erroneous ground that the issue regarding payment of rental dues to the Appellant by the Corporate Debtor alone or jointly with another entity (Reliance Communications Limited) is disputed in the present case.

5. The Appellant seeks payment of debt to the tune of INR 25,48,83,305/- as on 15 September 2022 as outstanding rent payable to the Appellant.

[3] Appellant/Operational Creditor is Reliance Realty Limited-RRL

[4] Respondent/Corporate Debtor is Altruist Customer Management India Private Limited formerly Vertex

Appellant contends that the Corporate Debtor has admitted its liability towards 20% of the rent payable each month to the Appellant. The said admission was also noted by the Adjudicating Authority. Appellant claims that even if only 20% of the rent is taken into account, the debt payable still crosses the threshold — beyond INR 1 crore and satisfies the condition for initiation of insolvency proceedings against the Corporate Debtor. The Impugned Order too records under "Analysis and Findings" that per the terms of MOS, MOU and LOU, the Corporate Debtor was liable towards 20% of the License Fee. Evidently, the Adjudicating Authority has failed to examine the consequences of its own observations made in the Impugned Order as well as the admissions made by the Corporate Debtor in its reply to the Section 9 Application, which categorically highlights that there is no dispute with respect to 20% of the amount being payable by the Corporate Debtor to the Appellant towards the License Fees under the License Agreement. Corporate Debtor has only made part payment towards License Fee and since April 2021, the Corporate Debtor has stopped making payment towards the License Fee. Thus, even if only the assumed 20% obligation of the Corporate Debtor to pay make payment towards License Fees is considered, the same crosses the minimum requirement of INR 1 crore under the Code. It is submitted that not only did the. Adjudicating Authority failed to recognise the admitted operational debt, but it did also not even consider that the License Agreement stood terminated and additional delay charges continue to accrue on the operational debt.

6. Appellant contends that this Appellate Tribunal in **Manmohan Gupta v MDS Digital Media Pvt. Ltd. & Anr., Company Appeal (AT) (INS) No. 202 of 2023 (Ref para 4)** and **Nandamuri Meenalatha v Quality Steels and Wire Products & Anr. Company Appeal (AT) (INS) No. 11 of 2023 (Ref para 78)** has held that the Adjudicating Authority ought to only look at the admitted debt whether it breaches the threshold of INR 1 crore under Section 4 of the Code and the question regarding the correct amount of debt ought to be looked at the time of collation of claim and not for the purpose of admission of application under Section 9 of the Code. Therefore, the observation of the Adjudicating Authority that the Corporate Debtor was not liable to pay the operational debt to the Appellant is erroneous in view of the admitted liability by the Corporate Debtor and settled position of law by this Appellate Tribunal.

7. The Adjudicating Authority has erred in relying on agreements which were executed prior to the registered License Agreement. Section 94 of the Bharatiya Sakshya Adhiniyam, 2023 ("BSA"), which corresponds to Section 91 of the Indian Evidence Act, 1872 states that:

> "When the terms of a contract, or of a grant, or of any other disposition of property, have been reduced to the form of a document, and in all cases in which any matter is required by law to be reduced to the form of a document, no evidence shall be given in proof of the terms of such contract, grant or other disposition of property, or of such matter, except the document itself or secondary evidence of its contents in cases in which secondary evidence is admissible under the provisions hereinbefore contained"

8. Thus, from a bare reading of the above, it is evident that the License Agreement ought to be considered as the primary document to adjudicate any purported dispute between the parties and reliance cannot be placed on earlier agreements between the parties or otherwise. (Ref: Para 17-**Roop Kumar v. Mohan Thedani (2003) 6 SCC 595**). In this regard, it is relevant to note that the License Agreement also includes the 'Entire Agreement Clause' Pg. 126-APB I/Appeal) which provided that the License Agreement would constitute the entire agreement between the parties with respect to the Premises and would supersede all oral and written understanding and agreements with respect thereto and shall also inter alia govern the enforcement of the said License Agreement.

9. The jurisprudence has been settled by the judgments of the Hon'ble Supreme Court in **Joshi Technologies International INC. v Union of India & Ors. (2015) 7 SCC 728** where the Hon'ble Court had held that the intention behind the entire agreement clauses is to not look into any other document or correspondence which took placed between the parties before signing of the agreement (para 41, 42 and 47 of the judgment.) The Hon'ble Delhi High Court in **Thyssen Krupp Materials AG v Mr. Karan Luthra 2017 SCC Online Del 7997** also held that the object of insertion of entire agreement clause in an agreement is to prevent either parties from raising any claims that are not encompassed in the executed agreement or which form part of the pre-negotiations. (Ref para 71-72 of the judgment).

10. Further, it is trite law that the parties are bound by the terms of the contract and the court cannot transplant any equity to the same by re-writing the terms of the contract (Ref: Para 14; **Kunnel Engineers & Contractors Pvt. Ltd., v New India Insurance Company Limited, (2023) 15 SCC 776 and** (Ref: Para 10 **Oriental Insurance Company Limited v Narbheram Power & Steel Pvt/ Ltd., (2018) 6 SCC 534**).

11. Furthermore, the MOS stipulates the bifurcation of the rent payable whereby 80% is payable by RCOM on behalf of the Corporate Debtor to the Appellant and 20% of the rent is payable by the Corporate Debtor to the Appellant. However, no such bifurcation was provided in License Agreement. Thus, the Impugned Order fails to recognise the entire agreement clause in the License Agreement which provides that all agreements between the parties are subsumed on account of execution of License Agreement. Further, the Adjudicating Authority has also failed to appreciate that the distinct agreements relied upon in the Impugned Order i.e., namely the MOS, MOU and undated LOU do not form part and/or find reference in the License Agreement (which is a later agreement) under which the operational debt is payable to the Appellant.

12. In relation to reference placed by the Adjudicating Authority and the Corporate Debtor on the LOU, the said undated LOU does not refer to the License Agreement but refers to a Sub Lease Deed Dated 28 August 2018. This shows the non-application of mind with which the NCLT has rejected Section 9 Application.

13. Even on a reading of the terms of the MOS, MOU and LOU, the liability to pay License Fee i.e., operational debt owed to Appellant rests on the Corporate Debtor, as a whole, regardless of the arrangement between Reliance Companies and the Corporate Debtor. In fact, in view of March Termination Notice, the Adjudicating Authority failed to apply its mind on the Corporate Debtor's admitted case that as per Clause a (vi) of the MOS even in the event of termination of the License Agreement assuming the terms of MOS are to be considered, it is not the Appellant but the Reliance Companies which ought to pay to the Corporate Debtor.

14. Assuming but not admitting, even if the Corporate Debtor was only liable to pay 20% of the License Fee, after initiation of CIRP against Rcom (original borrower), the liability to pay the entire License Fee fell on the Corporate Debtor. The License Agreement does not at any juncture envisage a creditor debtor relationship between Rcom and the Appellant and only forms a creditor/debtor relationship between the Appellant and the Corporate Debtor. There is no averment/submission which can contradict a clear creditor/debtor relationship between the Corporate Debtor and the Appellant and the fact that the Corporate Debtor was liable to pay the full amount due towards License Fees to the Appellant.

15. The NCLT has completely neglected the judgment of the Hon'ble Supreme Court in **Mobilox Innovations Private Limited v. Kirusa Software Private Limited (2018) I SCC 353 ("Mobilox Judgment"),** which expounds the true import and nature of the term 'dispute' and pre-existing dispute' as

provided under the Code. The Supreme Court had held that existence of 'dispute' needs to be established prior to issuance of demand notice and such dispute ought not to be hypothetical or illusory.

16. **Section 5(6)** of the Code defines the term 'dispute' to refer to the pendency of proceedings initiated against the existence of amount of debt, quality of goods or service and breach of representation and warranty. In the absence of any such condition being fulfilled and no proceedings being initiated prior to the issuance of the Demand Notice, the NCLT ought not to have concluded the existence of a pre-existing dispute.

17. It is not the case that the Corporate Debtor did not admit to its liability under the License Agreement (even though towards 20%- which in itself would surpass the threshold of INR 1 crore). Thus, the NCLT has grossly erred in holding that there is a pre-existing dispute vis-à-vis the operational debt is payable to the Appellant.

18. The NCLT in the Impugned Order ("Analysis and Findings") made a vague reference to the eviction proceedings initiated by the Appellant against the Corporate Debtor before the Civil Court in Thane, Mumbai, (Commercial Suit No. 9 of 2020) without providing specifically on whether the said observation has had a role to play in the determination of a pre-existing dispute by the Adjudicating Authority in the present proceedings. Assuming such an observation has contributed towards the Adjudicating Authority finding the existence of an alleged pre-existing dispute, the said civil proceedings pertain to eviction of the Corporate Debtor from the Premises

which have been initiated for vacation of Premises which has been illegally occupied by the Corporate Debtor despite lack of payments being provided to it by the Appellant. It is axiomatic that such proceedings are separate from the creditor/debtor liability under which the jurisdiction of the Adjudicating Authority and cannot be deemed to fall under the definition of "dispute" under as contemplated under Section 5(6) of the Code as it does not pertain to (i) existence of the amount of debt i.e., License Fee payable by the Corporate Debtor; (ii) quality of good or service; (iii) breach of any warranty or representation. Section 9 Petition was erroneously dismissed by the Adjudicating Authority on the ground of purported pre-existence of dispute over the operational debt payable by the Corporate Debtor to the Appellant. The Appellant had filed the Section 9 Petition on account of operational debt i.e., rental dues during the period between May 2019 to September 2022 (before filing of the Section 9 Petition) owed by the Corporate Debtor to the Appellant ("Default Period"). In fact, the Corporate Debtor had admitted its liability, in the pleadings before the Adjudicating Authority as also recorded in the Impugned Order and in its reply filed in the Appeal, towards 20% of such rental dues as payable to the Appellant. Such admitted dues are evidently above the minimum threshold level of INR 1 crore, as provided under Section 4 of the Code. However, the Adjudicating Authority failed to consider the said admitted debt, which satisfies the conditions laid down under Section 9 of the Code for admission of a petition filed therein and proceeded to reject the same on erroneous grounds, as detailed in the captioned Appeal and herein below.

19. The Adjudicating Authority has failed to consider that the debt admitted by the Corporate Debtor (in the Impugned Order itself) crosses the threshold of INR 1 crore, which is the only consideration mandated for admission of a petition filed under Section 9 of the Code. The Appellant and the Corporate Debtor had executed the License Agreement for the purpose of licensing of the Premises to the Corporate Debtor for consideration of INR 49,77,880/-, including GST and applicable tax at source, with the said rent to be escalated by 10% every three years ("License Fee"). Sometime in 2014, the Reliance Companies had engaged the services of the Corporate Debtor wherein on account of such services, there were some dues which were payable by the Reliance Companies to the Corporate Debtor. It is pertinent to highlight that the Appellant had not engaged any services provided by the Corporate Debtor and stood as a separate legal entity. Thereafter, these dues which were taken by the Reliance Companies were contemplated to be settled between the Corporate Debtor and the Reliance Companies. In view thereof, the Reliance Companies executed a Memorandum of Settlement dated 20 August 2018 ("MoS") with the Corporate Debtor towards settlement of dues payable to the Corporate Debtor by Reliance Companies. However, it is pertinent to note that the Appellant was not a party to such settlement agreement. As per the terms of the MoS, the debt payable by Reliance Companies to the Corporate Debtor would get settled by licensing the Premises to the Corporate Debtor for the rent amounting INR 4,97,788/-. It was inter alia further contemplated that RCom would pay 80% of the license fee (stipulated therein) to the Appellant and the balance 20% of the license fee was to be paid by the Corporate Debtor

to Appellant. Thereafter, a Memorandum of Understanding dated 20 August 2018 ("MoU") was executed between RCom, the Appellant and the Corporate Debtor, which reiterated the terms of the MoS. Even under the MoU INR 4,97,788 was to be paid as rent towards the Premises, i.e., 80% by Rcom to the Appellant and 20% by the Corporate Debtor to the Appellant. In view of this arrangement, a Sub Lease Deed dated 28 August 2018 was executed between the Appellant and the Corporate Debtor, which is also referred in the LoU (defined below). Further, an undated Letter of Understanding ("LoU") was addressed by the Reliance Companies and the Appellant to the Corporate Debtor. The said LoU merely recorded that in the event of conflict between the terms of the MoU, MoS and the Sub-Lease Deed agreement 28 August 2018, the terms of MoS would prevail. Notably, by way of a Sub Lease Cancellation letter dated 29 March 2019, the said Sub Lease Deed was mutually terminated by the parties. Evidently, the said Sub Lease Agreement was not in operation during the Default Period, against which the Appellant had filed the Section 9 Petition and thereafter, the present Appeal. Pertinently, the LoU refers to the Sub Lease Deed which has been erroneously equated by the Adjudicating Authority with that of the License Agreement. Accordingly, the event of conflict contemplated in the LoU pertained to Sub Lease Agreement and the MoS, not the License Agreement, as wrongly held by the Adjudicating Authority under the Impugned Order. It is the Corporate Debtor's case that the terms of the MoS and MoU. govern the rights of the parties in relation to rent payable towards the Premises. Thus, the Corporate Debtor was only liable to pay 20% of the License Fee to the Appellant. The Adjudicating

Authority has also erroneously relied upon the LoU and held that the LoU provides that in case of conflict, the terms of the MoS shall prevail between the parties. Based on the said interpretation, the Adjudicating Authority came to an incorrect conclusion that it is not a clear case of rent being due from the Corporate Debtor to the Appellant. Without prejudice to the contentions raised by the Appellant that the Corporate Debtor is liable to pay the entire dues towards the License Fee, it is crucial to highlight that the Adjudicating Authority has in an absurd fashion completely turned a blind eye towards the consequences of its own records in the Impugned Order as well as categorical admissions of debt by the Corporate Debtor under its Reply to the Section 9 Petition with respect to its liability towards 20% of the License Fee. The Impugned Order specifically in Para 2(II) while capturing the Corporate Debtor's contentions and further in Para4 (V) and para 4(VI) under the heading "Analysis and Findings" observes that as per the terms of the MoS, MoU and LoU, the Corporate Debtor was liable towards 20% of the License Fee. Further, in the reply filed by the Corporate Debtor to the Section 9 Petition at Para l(a), Para l(g) and 2(b) and the Reply to the present Appeal at para 3 and 4, the VII. Corporate Debtor expressly admits that 20% of the License Fee is payable by the Corporate Debtor. Pertinently, the Corporate Debtor has itself at Annexure R-8 (Detailed chart evidencing the total sum calculated by the Corporate Debtor as payable to it pursuant to deduction of License Fee as per purported 80:20 ratio) to its Reply before the Adjudicating Authority admitted that an amount of INR 1,39,38,062/- is payable to the Appellant. Thus, it is evident that the Adjudicating Authority has failed to

take note that even after accepting the contentions raised by the Corporate Debtor that it is only liable towards 20% of the License Fee, if such a calculation is to be considered, even then the assumed operational debt would cross the threshold of INR 1 Crore and the Section 9 Petition ought to be admitted. In fact, the Corporate Debtor has also admitted in its Reply to the Appeal that it was obligated to pay 20% of the License Fee. Further, the Corporate Debtor has not disputed the computation appended to the Appeal where the Appellant has set out the operational debt payable by the Corporate Debtor under the License Agreement. Therefore, the Corporate Debtor, has at all times, admitted its liability to pay 20% of the License Fee to the Appellant. However, and despite of such admission, the Corporate Debtor has deliberately failed to made payments towards the License Fee, even for 20% since April 2021 and the same has not been denied by the Corporate Debtor, at any stage of the proceedings i.e., neither before the Adjudicating Authority nor before this Hon'ble Tribunal.

20. Notably, even if the Corporate Debtor's liability of 20% to pay the License Fee is considered, the amount payable towards such operational debt still crosses the threshold - beyond INR 1 crore., as demonstrated below. The below table has been prepared based on the detailed computation annexed as Annexure A-6 to the Appeal. The below period accounts for the duration when the Corporate Debtor did not make any payment towards rent payable to the Appellant.

| Sr.No. | Period | Base Rendal Amount (INR) |
|---|---|---|
| 1. | July 2020 | 4977880 |
| 2. | August 2020 | 4977880 |

| | | |
|---|---|---|
| 3. | September 2020 | 4977880 |
| 4. | April 2021 | 4977880 |
| 5. | May 2021 | 4977880 |
| 6. | June 2021 | 4977880 |
| 7. | July 2021 | 4977880 |
| 8. | August 2021 | 4977880 |
| 9. | September 2021 | 5475668<br>Note: The rent was escalated as per Article II (c) of the License Agreement |
| 10. | October 2021 | 5475668 |
| 11. | November 2021 | 5475668 |
| 12. | December 2021 | 5475668 |
| 13. | January 2022 | 5475668 |
| 14. | February 2022 | 5475668 |
| 15. | March 2022 | 5475668 |
| 16. | April 2022 | 5475668 |
| 17. | May 2022 | 5475668<br>Note: Without prejudice to the contentions of the Appellant on 150% of the license fee to be charged on account of termination of the License Agreement, for the purpose of the present calculation, only base rental amount is being considered. |
| 18. | June 2022 | 5475668 |
| 19. | July 2022 | 5475668 |
| 20. | August 2022 | 5475668 |
| 21. | September 2022 | 5475668 |
| | Total | 11,10,06,724 |

Accordingly, even if 20% payment towards the License Fee is accepted (without admitting the same), it is clear that the rent payable to the Appellant, as on filing of the Section 9 Petition crossed INR 1 crore threshold, as required under Section 4 of the Code. In view of the same, is humbly submitted that the Appeal deserves to be allowed, and CIRP ought to be initiated against the Corporate Debtor.

21. Appellant contends that it is settled law that where the admitted amount of the operation debt is in excess of the threshold of INR 1 crore, the Adjudicating Authority must admit the Section 9 Petition and the Corporate Debtor into CIRP, as held by this Hon'ble Tribunal in **Manmohan Gupta v MDS Digital Media Pvt. Ltd. & Anr., Company Appeal (AT)(INS) No. 202 of 2023**. Further, this Appellate Tribunal in **Nandamuri Meena Latha v Quality Steels and Wire Products & Anr., Company Appeal (AT)(CH)(INS) No. 11 of 2023** has held that if the debt payable is more than the threshold limit provided Section 4 of the Code, the application filed under Section 9 of the Code must be admitted by an Adjudicating Authority. Thus, it is evident that the Adjudicating Authority has evidently failed to consider the settled law of admitting the undisputed debt (20% of the License Fee) which crosses the threshold of INR 1 crore.

22. Appellant again reiterates that no pre-existing dispute subsists between the parties qua the License Fee. The Corporate Debtor has alleged that the Adjudicating Authority has correctly dismissed the Section 9 Petition on ground that there was a pre-existing dispute between the parties and in order to settle the alleged pre-existing dispute, the MoS and the MoU were executed by the parties. Notably, the Adjudicating Authority has erroneously concluded in the Impugned Order that there was a 'pre-existing dispute' between the parties. The Adjudicating Authority has placed incorrect reliance on distinct agreements, namely MoS, MoU and the LoU, in order to ascertain whether the payment of License Fee can be attributed fully on the Corporate Debtor alone

in as much as large part of the License Fee i.e., 80% was allegedly payable by Reliance Companies on behalf of the Corporate Debtor to the Appellant.

23. Adjudicating Authority has grossly erred at holding that the parties have a pre-existing dispute in relation to the operational debt claimed under the Section 9 Petition. Firstly, Adjudicating Authority has failed to establish how the definition of dispute and conditions as stipulated under Section 5(6) of the Code stand fulfilled for the said interpretational issue to be deemed 10 as a pre-existing dispute. Crucially, the term "dispute" as contemplated under Section 5(6) of the Code refers to pendency of proceedings initiated against the existence of amount of debt, quality of goods or service and breach of representation and warranty. In the absence of any such condition being fulfilled and no proceedings being initiated prior to the issuance of the Demand Notice, the Adjudicating Authority ought not to. have concluded the existence of a pre-existing dispute. Secondly, one of such terms in the License Agreement contemplated the entire agreement clause which provided that the License Agreement would constitute the entire agreement between the parties with respect to the Premises and would supersede all oral and written understanding and agreement with respect thereto and shall also inter alia govern the enforcement of the said License Agreement. Adjudicating Authority failed to consider the above clause which makes it abundantly clear that the License Agreement contains the entire agreement between the parties and does not, either implicitly or otherwise, incorporate the MoS, MoU or LoU, which the Adjudicating Authority has considered under the Impugned Order. Thus, any arrangement which is prior to the execution of the License

Agreement either would have been merged into the License Agreement and would have been reflected in the same or the terms of the License Agreement ought to be read in isolation.

24. Additionally, the Corporate Debtor alleged that the Appellant is bound by the principles of estoppel which binds it to the terms of the MoS and MoU and reference to the License Agreement is nothing but an act of fraud. Notably, the principle of estoppel, as alleged by the Corporate Debtor, is not applicable in the present case against the Appellant. In fact, the Corporate Debtor is bound by the principle of estoppel as pursuant to execution of the License Agreement and having agreed to the terms of the License Agreement, it cannot now renege from the same.

25. Moreover, the Corporate Debtor has alleged that the MoS which was executed between the Corporate Debtor and Rcom (parent company of the Appellant), binds the Appellant as well to execute a lease deed for the period of 7 years for the purpose of settlement of dues of the Corporate Debtor payable by the Reliance Companies. Thus, the Corporate Debtor contends that the bifurcation of payment of the rent towards the Premises, as contemplated in the MoS i.e., 20% payable by the Corporate Debtor and 80% payable by RCOM was agreed upon by the parties as rent/License Fee payable towards the Premise. The Corporate Debtor further alleged that the lease deed, referred therein, could not have been terminated unless the Reliance Companies paid the entire settlement amount to the Corporate Debtor. Arguendo, even if the submissions of the Corporate Debtor are considered and

the rights of the parties are presumed to be governed by the MoU, MoS and the LoU, a bare perusal of the License Agreement would make it evident that the bifurcation contended by the Corporate Debtor is not reflected or contemplated in the License Agreement. In fact, there is no reference to MoS or MoU or the LoU in the License Agreement which could have extended the arrangement in relation to bifurcation of the License Fee payable to the Appellant. Thus, it cannot be contended by the Corporate Debtor that the terms of the previous agreement, which have no reference in the subsequent agreement, would govern the rights and obligations of the parties contemplated in such subsequence agreement. In any event, the reference to payment of settlement amount on account of termination before the lock-in period is erroneous. As detailed in the Appeal, the License Agreement has been terminated in accordance with the terms of the License Agreement and these terms have not bene disputed by the Corporate Debtor. Instead, it relies on the terms of a separate agreement to state that the Appellant could not have terminated the License Agreement. Further, the terms of the MoS cannot be imposed on the Appellant who is not even a signatory to the said agreement. Thus, it is clear that the Adjudicating Authority failed to acknowledge the basic principle of interpretation of commercial contracts that the interpretation of any clause of a contract must be first done on the basis of the bare reading of such contract. However, the Adjudicating Authority failed to interpret the unambiguous tenns of the License Agreement, and also brought the terms of the MoS, MoU and LoU into the License Agreement which does not refer to such documents.

26. While alleging material suppression of facts, the Corporate Debtor has failed to adduce any evidence demonstrating such material suppression of facts. Such bald statements, without showing any incidence of the alleged suppression, are merely being made to obfuscate this Appellate Tribunal from considering the clear error of law committed under the Impugned order. The Corporate Debtor also contends that the Appellant ought to have taken the recourse of arbitration which is contemplated under the MoS/MoU and the LoU. As stated above, the Appellant and the Corporate Debtor are bound by the terms of the License Agreement and in any event, the existence of an arbitration agreement does not preclude the Appellant from exercising its rights under the Code.

27. Pertinently, a bare reading of the License Agreement, in particular, Article II demonstrates that the liability and responsibility of payment of the License Fee rests upon the Corporate Debtor. The Corporate Debtor has admittedly only made part payment of the License Fee to the Appellant since May 2019 and from April 2021 onwards the Corporate Debtor has failed to make any payments towards its obligation for payment of the License Fee under the License Agreement. Thus, the Adjudicating Authority has failed to apply its mind on the overwhelming evidence produced by Appellant to establish the existence of an operational debt owed by the Corporate Debtor to Appellant. The Adjudicating Authority disregarded the abstruse terms of the License Agreement which contemplates 100% payment of the License Fee by the Corporate Debtor and instead relied upon the terms of the distinct, different and separate agreements, one of which does not even have the

Appellant as a party (MoS) and to an undated letter (LoU) which refers to a separate Sub Lease Deed and does not refer to the License Agreement. Thus, it is submitted that the Adjudicating Authority has erroneously held MoS, MoU and the LoU is the guiding document for the purpose of determining the License Fee. The non-application of mind is evident from the bare reading of the undated LoU which refers to Sub Lease Deed dated 28 August 2018. On the other hand, the present dispute relates to the non-payment of the operational debt accruing from the License Agreement dated 29 March 2019. Thus, without perusing the implication of documents, the Adjudicating Authority imposed the liabilities from several distinct agreements viz., MoS, MoU and LoU unto the Appellant.

28. Thus, the Adjudicating Authority has completely erred in holding that this is not a clear case of rent being due from the Corporate Debtor to the Appellant. The Adjudicating Authority arrived at the erroneous conclusions based on an incorrect reliance on the documents which were executed before the License Agreement. Admittedly and as recorded in the Impugned Order, the Appellant is not a party to the MoS which is the reference document for the purported arrangement on License Fee payment whereby 80% of the License Fee was to be paid by Rcom to the Appellant on behalf of the Corporate Debtor and 20% of the amount was to be paid by the Corporate Debtor. Pertinently, the said bifurcation of the payment is not stipulated under the License Agreement. Thus, the liability to make payment of the whole amount of the License Fee is solely on the Corporate Debtor as far as the Appellant is concerned. Given that the Appellant is not a party to the MoS, the

Adjudicating Authority imposing the implication and liabilities arising from an agreement to which the Appellant is not even a party is in clear violation of the settled principles of law and contours of the Code.

29. Thus, it is clear from the above, that the Adjudicating Authority has failed to appreciate the scope and intent of the MoU, MoS and the LoU vis-à-vis the terms of the License Agreement and completely turned a blind eye to the evidence produced by the Appellant to substantiate the debt and default in the said proceedings by merely accepting the illusory defence offered by the Corporate Debtor in contravention to the provisions of the Code.

30. Notably, the Corporate Debtor has constructed a baseless and false narrative on pre-existence of dispute in the present case. However, without appreciating the glaring evidence in favour of the obligation of the Corporate Debtor to pay the License Fee, the Adjudicating Authority has failed to grasp the true import and nature of the term 'dispute' as provided under the Code. In **Mobilox Innovations Private Limited Vs. Kirusa Software Private Limited (2018) 1 SCC 353**, the Hon'ble Supreme Court has held that a dispute is said to exist, as long as there is a real dispute as to payment between the parties that would fall within the inclusive definition contained in Section 5(6) of the Code. Particularly, Section 5(6) of the Code defines 'dispute' to include a suit or arbitration proceedings relation to (a) the existence of the amount of debt; (b) the quality of goods or services or (c) the reach of a representation or warranty. As stated above, the Adjudicating

Authority has failed to evaluate whether the purported defence raised by the Corporate Debtor qualifies as dispute under the Code.

31. Pertinently, the Adjudicating Authority plainly dismissed the Section 9 Petition on the ground that the Corporate Debtor is not liable to pay the operational debt in its entirety. The Adjudicating Authority did not examine the nature of the operational debt which towards non-payment of the rental dues to the Appellant sought under the License Agreement. Nor did the Adjudicating Authority evaluate the terms of the License Agreement which clearly stipulate that the Corporate Debtor is liable to pay the License Fee to the Appellant as consideration for occupying the Premises. It is not the case of the Corporate Debtor. that the License Agreement bifurcates the liability towards payment of rent with the ratio of 80:20 where the Corporate Debtor was only liable to pay 20% of the License Fee. In fact, the Corporate Debtor imported the terms of the distinct agreements (MoS, MoU and LoU) and merged the bifurcation towards payment of License Fee which is not stipulated in the License Agreement. Thus, it is clear that the Corporate Debtor has created a spurious, mere bluster and vexatious defence and have labelled the same as 'pre-existence' between the parties.

32. At this juncture, it is pertinent to highlight the judgment of this Appellate Tribunal in **IDBI Capital Markets & Securities Ltd v JBF Petrochemicals Ltd., 2021 SCC Online NCLAT 4553**, where the Hon'ble Tribunal had examined the contours of pre-existence of a dispute and had inter alia held as follows:

"MEANING OF DISPUTE

46 It must be borne in mind that a 'Dispute' is not to be a just denial of the due payment. A 'Dispute' is to come within the definition of Section 5(6) of the I&B Code. The term 'includes' in the definition of 'Dispute' (as per Section 5(6) of the Code) is to be read as 'means' and not as 'include'. An 'Adjudicating Authority 'is to be subjectively satisfied that there exists a 'Dispute' and the same is not a frivolous or vexatious one. Also, it cannot be forgotten that an 'Adjudicating Authority' under the I&B Code is not the 'proper Forum' for deciding the disputed claims/triable issues of a given case, in the considered opinion of this 'Tribunal'. "

33. Similarly, this Appellate Tribunal in **Soham Polymers Private Limited Vs. Flocksur India Private Limited Company Appeal (AT) (Insolvency) No. 924/2021**, has held that in proceedings under Section 9 of the Code, the Court has to be satisfied that a dispute truly exists in fact and is not spurious, hypothetical or illusory. While adjudicating an application under Section 9 of the Code, this Appellate Tribunal has held in **Deepak Modi Vs. Shalfeyo Industries Private Limited, 2023 SCC Online NCLAT 169** that a "genuine" pre-existing dispute is a must in order to reject an application under Section 9 of the Code. Pertinently, the Corporate Debtor's limited defence remained that the earlier executed agreements, viz., MoS/MoU provided that the Corporate Debtor would only pay 20 % of the debt. However, the Corporate Debtor never refuted the binding nature of the terms and the obligations under the License Agreement. In fact, the Corporate Debtor never challenged the License Agreement or contended that the License Agreement was not executed by the Corporate Debtor. Thus, by importing the reference of separate agreements into the License Agreements, the Corporate Debtor is

only trying to create an illusory and moonshine defence of pre -existing dispute and the same deserves to be dismissed in view of the settled judgments of this Hon'ble Tribunal and the Hon'ble Supreme Court.

34. In view thereof, it is clear that the Adjudicating Authority has wrongly held that 80% of the License Fee was not payable by the Corporate Debtor. The Adjudicating Authority erred at relying on MoS, MoU and an undated LoU which was executed prior to the registered License Agreement. In fact, the License Agreement does not contain reference of MoS/MoU or LoU which evidently demonstrates the intention of the Appellant and Corporate Debtor to restrict their rights and liabilities to the License Agreement. Evidently, the 'Appellant's right in claiming the License Fee stems from the License Agreement and not MoS/MoU or LoU. Thus, placing reliance on these documents and not on the License Agreement when the Section 9 Petition has been based on the non-payment of License Fee, amounting to operational debt, is completely erroneous and against the ethos of the Code. The eviction suit filed by the Appellant does not qualify as a pre-existing dispute. Adjudicating Authority has erred in holding that the parties had a pre-existing dispute on account of eviction suit filed by the Appellant against the Corporate Debtor. Particularly, under the heading "Analysis and Findings", the Adjudicating Authority makes vague reference to the eviction proceedings initiated by the Appellant against the Corporate Debtor before the Civil Court in Thane, Mumbai, (Commercial Suit No. 9 of 2020, renumbered as Commercial Suit No. 2 of 2023) without providing specifically whether the said observation has had a role to play in the determination of a pre-existing

dispute by the Adjudicating Authority in the present proceedings. Assuming that the said observation has had an impact towards the finding of the Adjudicating Authority on the existence of a pre-existing dispute, it is crucial to highlight that the said proceedings have been initiated for vacation of the Premises which has been illegally occupied by the Corporate Debtor despite lack of any payments being provided by it to the Appellant. In contrast, the present proceedings have been initiated seeking for initiation of insolvency proceedings against the Corporate Debtor for continuous defaults in payment towards the License Fees. The definition of 'dispute' is clear and on bare reading of the same, it is evident that the subject matter of the eviction proceedings does not pertain to either (i) existence of the amount of debt i.e., License Fee payable by the Corporate Debtor; (ii) the quality of the good or service or (iii) breach of any warranty or representation. The civil suit is completely distinct from the subject matter of the present Section 9 Application and cannot, by any stretch of imagination, fall under any of the heads prescribed under the definition of "dispute" under the Code. Thus, it cannot be treated as a "pre-existing dispute" for the purposes of the Section 9 Application, particularly the manner in which the same has been considered under the Impugned Order by the Adjudicating Authority. Thus, it is clear that the Adjudicating Authority completely failed to consider the above arguments and passed the Impugned Order without application of mind and in gross violation of the Code.

35. The Appellant further submits and reiterates that the liability to pay the entire License Fee solely devolves upon the Corporate Debtor even as per the

terms of the MoS, MoU and LoU. In view of the above, it is clear that the Adjudicating Authority has ignored the settled provision of law laid down by the Hon'ble Supreme Court and this Hon'ble Tribunal that (i) an application under Section 9 of the Code must be allowed when the admitted debt crosses the monetary threshold of INR 1 crore as prescribed under Section 4 of the Code; (ii) a moonshine defence cannot be considered for the purpose of examination of the 'pre-existence' of a dispute under Sections 8 and 9 of the Code; (iii) the interpretation of commercial contracts require literal interpretation; (iv) a civil suit filed in relation to eviction of the Corporate Debtor could not be considered as a pre-existing dispute between the parties.

36. Thus, in view of the above submissions, the Appellant humbly submits and prays that the Appeal deserves to be admitted and the Impugned Order ought to be set aside.

**Submissions of the Respondent – Altruist Customer Management India Pvt. Ltd. earlier Vertex Customer Management India Private Ltd**

37. Adjudicating Authority has rightly appreciated that the appeal filed in NCLT was not maintainable in terms to Section 9 of the IBC 2016 due to pre-existing dispute between the parties evident from the conclusion made in para no 4, 11, 9 and 6 of the judgment at page no. 92 to 97 of the order dated 05.09.2024. The appellant is trying to mislead the Court from the fact that how the existence of landlord and tenant come into picture. Memorandum of settlement at page 284 of the appeal shows that for settling the dues of Rs.32,86,56,444/- the parental company Reliance Communication Limited agreed to let out the space to the Corporate Debtor by binding its subsidiary

company i.e. Appellant whereby it was agreed that the Appellant will execute a Lease Deed for the property situated at BLDG No. A-8, Sector No.1, Plot No. MBP2, TTC, Mhape, Navi Mumbai for a period of 7 years 4 months to settle the dues of their parental company. It was also agreed that the 20% of the rent will be paid by the Corporate Debtor to the Appellant directly and rest 80% shall be paid by the parental company i.e, Reliance Communication Ltd. to Appellant directly and the parental company to the extent of 80% will not deduct TDS evident at page no. 285 (III) of the said settlement deed. At Clause No. F of the said settlement deed at page no. 286 it is clearly mentioned that the terms of MOS is executed free of consent and to square of the debts and outstanding of the Corporate Debtor by reliance and its affiliates and Group Companies page no. 286. it is also mentioned in Clause R and page no. 287 for the settlement deed that in case of any dispute under the said MOS same shall be referred to Arbitration.

38. After the execution of Memorandum of Settlement on 20.08.2018 another Memorandum of Understanding subsequent was signed in which at page no. 291 it is categorically written that they are settling the disputes of the settlement amount specified in the Memorandum of Settlement and accepted the terms contained in the said Memorandum of Settlement and to give effect to the Memorandum of Settlement the Memorandum of Understanding was executed on the same day on dated 20.08.2018 whereby in Clause 1.2 and 1.7 the Appellant bind themselves for the making the payment of the settlement amount and also accepted the proportion of rent to be paid 20:80 ratio and in Clause 2 of the said Understanding parental

company agreed that the 80% amount paid to Appellant directly in terms to settled condition of MOS (Memorandum of Settlement). Even Appellant was party to the same clearly mentioned that the MOU shall read in conjunction with the MOS and in case any of term herein been contrary to the terms of MOS the terms of MOS shall prevail page no. 29l. Even on the same day a LETTER OF UNDERSTANDING dated 20.08.2018 which Annexure R-4, page no. 453 of the appeal clearly demonstrate that the Appellant undertakes that the terms of MOS, MOU and deed shall be read together and in case of any inconsistency therein term of MOS will prevail between Appellant, its parental company and its Group Companies and Corporate Debtor and which was duly signed by all parties.

39. Respondent contends that the present appeal challenging the Order dated 05.09.2024 is totally perverse and an attempt to misguide the Appellate Tribunal and an attempt to get something out of nothing as the Adjudicating Authority while passing the said order has rightly appreciated that the same appeal filed in NCLT was not maintainable in terms to Section 9 of the IBC 2016 due to pre-existing dispute between the parties evident from the conclusion made in para no 4, 11, 9 and 6 of the judgment at page no. 92 to 97 of the order dated 05.09.2024.

40. Respondent contends that the appellant is trying to mislead the Court from the fact that how the existence of landlord and tenant come into picture. It is evident from the Memorandum of settlement at page no. 98 of APB it is admitted fact that for settling the dues of Rs.32,86,56,444/- (Rs. Thirty Two

Crores Eighty Six Lacs Fifty Six Thousand Four Hundred and Forty Four Only) the [5]parental company Reliance Communication Limited agreed to let out the space to the Corporate Debtor by binding its subsidiary company i.e. Appellant whereby it was agreed that the Appellant will execute a Lease Deed for the property situated at BLDG No. A-8, Sector No.1, Plot No. MBP2, TTC, Mhape, Nevi Mumbai for a period of 7 years 4 months to settle the dues of their parental company. It was agreed that the 20% of the tenant will be paid by the Corporate Debtor to the Appellant directly and rest 80% shall be paid by the parental company i.e, Reliance Communication Ltd. to Appellant directly and the parental company to the extent of 80% will not deduct TDS as per settlement deed.

41. Furthermore, at Clause No. f of the said settlement deed, it is clearly mentioned that the terms of MOS are executed free of consent and to square of the debts and outstanding of the Corporate Debtor by reliance and its affiliates and Group Companies page no. 286. It is also mentioned in Clause r of settlement deed that in case of any dispute under the said MOS same shall be referred to Arbitration.

42. After the execution of Memorandum of Settlement on 20.08.2018, another Memorandum of Understanding was signed where it is categorically written that they have settlement of the dispute of the settlement amount specified in the Memorandum of Settlement and accepted the terms contained in the said Memorandum of Settlement and to give effect to the Memorandum

[5] Clause (a) of MOS

of Settlement the Memorandum of Understanding was executed on the same day on dated 20.08.2018 whereby in Clause 1.2 and 1.7 the Appellant bind themselves for the making the payment of the settlement amount and also accepted the proportion of rent to be paid 20:80 ratio and in Clause 2 of the said Understanding parental company agreed that the 80% amount paid to Appellant directly in terms to settled condition of MOS (Memorandum of Settlement).

43. Appellant is trying to mislead the Appellate Tribunal by filing a vague, baseless appeal because as per Clause 6 of the said Memorandum of Understanding executed by Appellant and wherein even Appellant was party to the same clearly mentioned that the MOU shall read in conjunction with the MOS and in case any of term herein been contrary to the terms of MOS the terms of MOS shall prevail.

44. Even on the same day a Letter of Understanding [6]dated 20.08.2018 which is at page no. 111 of the appeal clearly demonstrate that the Appellant undertakes that the terms of MOS, MOU and deed shall be read together and in case of any inconsistency therein, terms of MOS will prevail between Appellant, its parental company and its Group Companies and Corporate Debtor and which was duly signed by all parties.

45. Adjudicating Authority has rightly passed the order dated 05.09.2024 and there is no illegality or perversity and or non-application of judicious mind while rejecting the Section 9 application in terms to section 9(5)(2)(d) of the

[6] As per records it is undated letter of understanding

Appellants in terms to condition mentioned in MOA, MOU, Letter of Understanding executed between both parties on 20.08.2018.Order dated 05.09.2024 passed by Adjudicating Authority is absolutely legal and correct in terms to settled judgment of this AT passed in Company Appeal (AT) (Insolvency) No. 95 of 2025 titled "**Tirupati Drilling & Mining Services Private Ltd vs Sadbhav Engineering Limited**" on the ground that in case there is pre-existing dispute between the parties, Section 9 petition is not maintainable which the Adjudicating Authority rightly appreciated. Adjudicating Authority passed the order by verifying all the facts and terms of MOS, MOU and letter of understanding which are conjoint with each other. Further only after signing Memorandum of Settlement and Memorandum of Understanding and letter of understanding between Appellant and parental company with Corporate Debtor the later agreed to settle his dues of recovery i.e. Rs Rs.32,86,56,444/- [Rs. Thirty Two Crores Eighty Six Lacs Fifty Six Thousand Four Hundred and Forty Four Only] and agreed to take the said premises on lease for the period of 7 years and 4 months in terms of the letter of understanding duly signed by Appellant and Corporate Debtor the existence of lease deeds comes. Lease deeds in question cannot be read in bits and pieces and standalone manner.

46. MOS, MOU and letter of understanding, were all executed on the same day i.e. 20.08.2018 to settle the dispute between the parental company which binds its Group Company i.e. Appellant to give the premises on rent in terms of 20:80 ratio for a period of 7 years 4 months to settle its outstanding towards Corporate Debtor. Further when it is duly signed by the Appellant Company

and acted on the same till 2020 by taking 20% rent from Corporate Debtor from 2018, Appellant in no way can say that the said dues of 80% is also a liability of the Corporate Debtor. At best they Appellant should have gone to Arbitration for the same and in no means Section 9 petition is maintainable until the dues and the duration for the which the MOS and MOU and letter of Understanding was signed between the parties is lapsed. Therefore, to demand the said 80% component of the rent from the Corporate Debtor is totally unfair and un warranted.

47. Moreover, once a legal notice for eviction notice is given, ignoring the terms of MOS and MOU and letter of understanding duly executed between the parties, the entire act of Appellant is nothing but violation of the terms of the said deeds and have no right to approach this forum as a recovery forum. On the contrary Appellant should have moved to Arbitration of Eviction proceedings, which they had already done by approaching or Eviction proceedings in District Thana Mumbai, which was objected by the Appellant, while moving an application u/s 11 of the Arbitration Act. District Court Mumbai vide order dated 11.03.2025 directed the Appellant to approach the concerned Arbitration for their eviction and recovery proceedings. According to law due to a pre-existing dispute they cannot treat NCLT as Recovery forum pre-existing dispute under Section 9 petition is maintainable basis the facts and evidence tendered by both the parties. Ld. Adjudicating Authority has rightly dismissed the petition of Appellant, while passing the order dated 05.09.2024 which is under appeal as not maintainable.

48. Once a pre-existing dispute is there, which includes giving eviction notice by Appellant and duly replied by the Corporate Debtor prior to issue of Demand Notice under IBC Code 2016 the proceedings of Section 9 initiation under IBC are barred.

49. Further due to the fact that the Appellant was receiving the rent in 20:80 ratio from 2018 till 2020, this itself binds themselves with the terms of conditions of MOS, MOU and letter of understanding and principle of estopple by conduct. Moreover, refusing to accept the terms till the lapse of the period of 7 years, 4 months mentioned in the Memorandum of Settlement-on which the existence of the lease deeds comes into existence making a relationship of landlord and tenant between both the parties cannot be read independently therefore, it is nothing but an act of unjust enrichment on the part of the Appellant.

50. The present appeal filed by appellant is liable to be dismissed out rightly and there is no scope of interference in the order dated 05.09.2024 passed by Adjudicating Authority under Section 9(5)(2)(d) of IBC Code 2016 and also imposing exemplary costs on the Appellant for filing false, frivolous and baseless appeal in the interest of justice.

51. The order passed by the NCLT (Adjudicating Authority) dated 05.09.2024 is in consonance with Section 9 (5) (2) (d) as there was a pre-existing dispute between both the parties pertaining to lease property. Lease executed by the Appellant in favour of Corporate Debtor, was under the contractual obligation in terms to Memorandum of Settlement dated

20.08.2018 which was conjoint with another documents i.e. Memorandum of Understanding and letter of Undertaking all executed on the same day dated 20.08.2018 so binds both parties to the amicable settlement for clearing the dues of the Corporate Debtor amounting to Rs.32,86,56,444/- which was due and payable and outstanding towards principal company of the Appellant. It was a contractual obligation of the Appellant Company to execute a lease deed in favour of Corporate Debtor for the period of 7 years 4 months for clearing the dues of their principal company to clear the outstanding of the Corporate Debtor by giving on lease the subjected property in question. So the existence of the lease deed executed between both parties came into existence only after the said principal documents including Memorandum of Settlement, Memorandum of Understanding and letter of undertaking were executed between all necessary parties so stating that the lease deed should be read independent for purpose of present petition is totally baseless and vague.

52. Memorandum of Settlement says about contractual obligations that says rent would be Rs.49,97,788/-, which was the total rent which was supposed to be charged after three months in proportion to 20:80 ratio and lock in period was one year. Same obligation Clause (a) of Article (ii) L&L Agreement of 29.03.2019 [@119 APB] which also proves the facts that lease is supposed to commence from 28.11.2018 which is much prior from the execution of the said lease documents. Therefore, claiming that lease has no reference of Memorandum of Settlement or other documents dated 20.08.2018 is totally wrong and baseless. As Contract of lease came into existence due to the existence of Memorandum of Settlement, Memorandum

of Understanding and Letter of Undertaking executed and therefore, Contract be implied by law or by the conduct of the parties creates legally binding obligation even without written and spoken terms in the said lease deed and had to read all the documents con-jointly not separately.

53. Once a disputed fact need to be appreciated on evidence under Indian Evidence Act and pre-existing dispute, the adjudicating authority's role is limited to ascertaining if the genuine dispute is present or not. Even evidence such as an Arbitration notice or termination notice or reply to termination notice are signals of pre-existing disputes rightly held by this Tribunal and Hon'ble Supreme Court in **Mobilox Innovation Pvt. Ltd. (Supra)** and other judgments, which says the authority should not get involved in sifting through complex reliable contentions on giving a judgment on merits of the dispute.

54. That Adjudicating Authority cannot act as recovery forum once there is mentioning of Arbitration Clause or Eviction Suit already filed by the connected party on a demand letter dated 23.08.2022 of 100% amount which is objected and under dispute between both parties.

55. Hence the present petition u/s 9 is not maintainable and the Order passed by Adjudicating Authority dated 05.09.2024 by NCLT Delhi has no infirmity and within the Section 9 (5) (2) (d) of IBC code 2016 and relevant judgment filed by the respondent in their reply. Present petition filed by the Operational Creditor u/s 9 of IBC 2016 deserves to be dismissed as not maintainable and liable to be rejected u/s 9 (5) (2) (d) of IBC 2016.

**Appraisal**

56. This appeal arises out of the rejection of a Section 9 petition filed by Reliance Realty Limited-RRL-Appellant claiming operational debt against Altruist Customer Management India Pvt. Ltd.-ACMIPL- Respondent-Corporate Debtor formerly known as Vertex Customer Management India Private Ltd. relating to unpaid rentals under a License Agreement dated 29 March 2019.

57. We have heard counsel of both sides and perused the materials placed on record. The issue that arises for deciding this Appeal is whether dismissal of CP filed by the Appellant for invoking CIR Proceedings against the Appellant under Section 9 of the Code is sustainable due to an existence of dispute between the Appellant – OC – RRL and the CD – Altruist.

58. Before proceeding further, we find out the genesis of the "Operational debt". We note that the debt in question, as per claims of the Appellant-RRL have risen pursuant to a License Agreement dated March 29, 2019, executed between Reliance Realty Limited and Altruist Customer Management India Pvt. Ltd. the Corporate Debtor. Under this agreement, the Corporate Debtor was granted possession and occupation of a Building. The Corporate Debtor agreed to pay monthly rental dues but some dues are outstanding. Appellant contends that these dues constitute an operational debt within the meaning of Section 5(21) of the Insolvency and Bankruptcy Code, 2016. Accordingly, the Appellant issued a demand notice under Section 8 of the IBC for recovery of these dues, as per Section 9 of the Code. It is contended by the Appellant that there is no genuine dispute regarding the debt as the Corporate Debtor

itself had admitted liability for at least 20% of the monthly rent during relevant periods which itself exceeds the threshold limit of INR 1 crore prescribed in Section 4 of the IBC for initiating insolvency proceedings. The admitted liability itself suffices to demonstrate the existence of a debt and default warranting admission of the Section 9 petition, as held in **Nandamuri Meenalatha v. Quality Steels and Wire Products, Company Appeal (AT) (Insolvency) No. 11 of 2023.** Appellant further contends that the existence of the debt is further substantiated by the License Agreement, which is a registered contract containing an "entire agreement" clause. This agreement supersedes all prior arrangements, including the Memorandum of Settlement-MoS, the Memorandum of Understanding-MoU, and an undated Letter of Understanding-LoU executed between the parties or their related entities. Such prior agreements were entered into between Reliance group companies, including Reliance Communications Limited (RCom), which underwent insolvency proceedings, and the Corporate Debtor, as part of a larger consolidated settlement framework.

59. To determine the correctness of the outstanding dues per leave and license agreement, we find that it has historical linkage with the settlement of the past dues of Appellant as is noted in the demand notice issued by the Appellant dated 23rd August 2023 in @185 onwards in the APB which states as follows:

> "...
> 2. You (Altruist Customer Management India Private Limited or 'Altruist' or 'you'), are in the business of providing BPO operations and connected services to various entities. Under a Registered Agreement of Leave and License dated 29th March, 2019 (hereinafter referred to as the

said 'Agreement) entered. between the Operational Creditor as the Licensor and you as the Licensee, the Operational Creditor permitted you, for the purpose of conducting your BPO operations in the said premises, on terms and conditions contained therein. The tenure of the Agreement was 60 months commencing from 28th August, 2018. The lock-in period was for a period of twelve (12) months commencing from 28th August, 2018 wherein the Licensee (You) shall not be entitled to terminate the Agreement. The (Operational Creditor Licensor had a lock-in-period of nine (9) months commencing after three months from 28th August, 2018.

3. Under the License Agreement, you have agreed to pay licensee less @ Rs.49,77,880/- per month plus GST as applicable subject to deduction of applicable taxes at sources as required by law. The Operational Creditor was entitled to charge interest @15% p.a. on the outstanding sum if the payment is made after 7th of each calendar month towards delayed payment up to 60 days. All the statutory payments were to be made by you. There was escalation of license fees @10% after the first three years starting from the date of commencement of the agreement i.e. 28th August, 2018.

4. Few of Reliance Entities i.e. Reliance Communications Limited ('RCOM) and its subsidiaries namely Reliance Communications Infrastructure Limited ('RCIL), Reliance Telecom Limited (RTL) and Reliance Web Service Limited ('RWSL) [Collectively RCOM, RTL, RCIL and RWSL are referred to as 'Group Companies'] had availed services from You (formerly known as Vertex Customer Solutions India Private Limited) under Master Services Agreement dated 01.09.2014 ('MSA). Vide a Memorandum of Settlement dated 20th August, 2018, four of the Group companies of the Operational Creditor had entered into a Settlement with your Company against the dues that were payable by them to your company for the services provided to them by you under the MSA. Under the Memorandum of Settlement, it was agreed by the Group Companies that the property of the Operational Creditor shall be let out by the Operational Creditor to your Company and towards the license fee, 80% of the monthly license fees shall be paid by RCOM to the Operational Creditor to adjust the outstanding dues of RCOM to your company, and the balance 20% was to be paid by your Company Lo the Operational Creditor directly. It is pertinent to note that the Operational Creditor was not a party to the Memorandum of Settlement Deed dated 20th August, 2018 that was executed between you and the Group Companies.

5. You and the Operational Creditor have entered into a Memorandum Understanding of dated 20th August, 2018 wherein it was agreed by the parties that 80% of the License fees shall be paid by RCOM and you shall be paying 20% of the monthly license fees and other incidental charges to the Operational Creditor. This agreement in clear terms also provided the rights of the Operational Creditor to terminate the Leave and License Agreement and the consequences of termination of the Leave and License Agreement post the lock-in-period, whereby RCOM shall pay the balance unadjusted Settlement under their Memorandum of Settlement dated 20th August, 2018 to you. This means that there were no restrictions or embargo on the termination of the Leave and License Agreement and the Operational Creditor was at all times entitled to receive the entire license lees under the Leave and License Agreement. The Operational Creditor being a separate legal entity, was not in any way concerned about any dispute or settlement between the Group Companies and you and that was the reason that Operational Creditor had the right to terminate the Leave and License Agreement in case of breach of its provisions in terms of the Leave and License Agreement and the Memorandum of Settlement and Memorandum of Understanding, and the arrangement between you and the Group Companies was independent arrangement.

6. The Operational Creditor states that three of the companies to the said Memorandum of Settlement dated 20th August, 2018 went under the Corporate Insolvency Resolution Process, the License fees committed by you through these companies stopped coming in, or the Operational Creditor was not receiving the entire License fees that was promised/undertaken to be paid by you through these companies, resulting in outstanding dues to the extent of Rs. 3,72,34,546/- as on 9th January, 2020 unpaid by you. The Operational Creditor VII (1) the License accordingly in terms of Article of Agreement, issued a notice dated 9th January 2020 to you to remedy the breach within a period of 30 days thereof by making the payment of the outstanding License fees of Rs. 3,72,34,546/ that was due as on 9th January, 2020 along with the prescribed rate of interest as per the Agreement @15% p.a., within a period of 30 days thereof, failing which the Operational Creditor would be taking appropriate action against the you…"

60. Further, the details of the past dues are noted in the APB in the very beginning of the APB at pages 7 onwards noted as below:

| | |
|---|---|
| 01.09.2014 | Reliance Group Companies (RCOM, RCIL, RTL, RWSL) availed services of the Corporate Debtor under a Master Services Agreement. Bills mounted to INR 32,86,56,444 owed to Vertex Customer Management India Private Ltd now Altruist Customer Management India Pvt. Ltd. |
| 20.08.2018 | For settlement of debt amounting to INR 32,86,56,444 owed to the Corporate Debtor ("MoS"), Group Companies and Corporate Debtor entered a Memorandum of Settlement regarding dues payable, agreeing that the Operational Creditor's property would be let out to the Corporate Debtor, with 80% license fees payable by RCOM and 20% by the Corporate Debtor. |
| 20.08.2018 | Memorandum of Understanding dated 20 August 2018, ("MoU") executed between RCL, the Appellant and the Corporate Debtor which reiterated the terms of MoS INR 4,97,788(0)[7] as rent payable for the Premises. The terms of the MoS were reiterated in MoU. |
| 28.08.2018 | Sub Lease Deed executed between Appellant and the Corporate Debtor where the parties had agreed that the Premises would be licensed to the Corporate Debtor by the Appellant on a monthly rent of INR 49,77,880 . |
| 29.03.2019 | The Appellant and the Corporate Debtor executed Sub Lease Cancellation Letter where the parties mutually decided to terminate and cancel the Sub Lease Deed dated 28 August 2018. |
| 29.03.2019 | A registered Leave and License Agreement was executed between the Operational Creditor (Licensor) and Corporate Debtor (Licensee) at a monthly license fee of ₹49,77,880/- plus GST. |
| 06.11.2019 | Appellant informed the Corporate Debtor that the License Fee for the month of November 2019 i.e., INR 58,73,898 is payable by the Corporate Debtor. |
| 02.12.2019 | Representative of the Appellant addressed another email to the Corporate Debtor seeking payment of INR 58,73,898. |
| 13.12.2019 | Representative of the Appellant once again called upon the Corporate Debtor to make full payment of License Fee to Appellant without deducting 80% amount and to also pay any differential in the payments made towards License Fee since 10 May 2019. |
| 09.01.2020 | Operational Creditor issued a notice to Corporate Debtor for breach due to outstanding dues of ₹3,72,34,546/- and called for payment with interest within 30 days. |
| 28.01.2020 | Corporate Debtor replied denying breach, claiming compliance with the MoU and Settlement terms, while continuing to occupy the premises without paying license fees. |

[7] We find this figure to be different than claimed later parts in the APB with one additional zero in the end

| | |
|---|---|
| 21.03.2022 | Operational Creditor issued a termination notice under the Agreement, requiring Corporate Debtor to vacate by 21.05.2022 and pay 150% of license fee per day of delay. |
| 25.03.2022 | Corporate Debtor wrote to Operational Creditor and Group Companies, stating RCOM must pay its unadjusted dues to Corporate Debtor before eviction. |
| 18.05.2022 | Operational Creditor clarified that they were not a party to the Settlement and had full contractual right to terminate and seek eviction. |
| 21.05.2022 | Corporate Debtor reiterated disputes under the Settlement and claimed Operational Creditor could not terminate until those issues were resolved. |
| 26.05.2022 | Operational Creditor replied that Corporate Debtor was bound only by the Agreement and would be considered a trespasser if they failed to vacate. |
| 01.06.2022 | Corporate Debtor contended that the Agreement could not be read in isolation from the MoU and Settlement and refused eviction, indicating arbitration would be invoked. |
| 13.06.2022 | Operational Creditor again asserted its right to terminate and demanded outstanding payments or vacation of premises. |
| | Corporate Debtor's outstanding dues stood at ₹ 19.89 crore license fees and ₹24.34 crore including 15% interest, payable to Operational Creditor. |
| 23.08.2022 | Operational Creditor issued a demand notice in Form 3 under Section 9 of the Insolvency and Bankruptcy Code, 2016. |

61. From the perusal of averments of the Appellant in the demand notice and also extracts of chronology, it is clear that the leave and license agreement has a direct linkage with the LOS and MoU as mentioned in the APB itself. We note that the building was licensed to the Respondent for settlement of their past dues. And now apparently the settlement has failed in this case, due to peculiar circumstance as noted in the demand notice that *"three of the companies to the said Memorandum of Settlement dated 20th August, 2018 went under the Corporate Insolvency Resolution Process, the License fees committed by you through these companies stopped coming in, or the Operational Creditor was not receiving the entire License fees that was*

*promised/undertaken to be paid by you through these companies, resulting in outstanding dues to the extent of Rs.3,72,34,546/- as on 9th January, 2020 unpaid by you".* In such a situation who is liable to pay rest 80% and then subsequent termination of the leave and license agreement by the Appellant-RRL are contractual disputes and Adjudicating authority cannot determine the debt and default - even to the extent of 20% of the rent and cannot be undisputedly fastened on the Respondents.

62. The Respondent claims that the License Agreement incorporates the terms of these prior agreements, including the liabilities of the related group companies, and that these cannot be excluded from the scope of the debt claim. Reliance Realty Limited, as a successor-in-interest and operational creditor, cannot evade responsibility for the debt underlying the License Agreement by invoking the insolvency status of other Reliance group companies. We may not enter into this question at this stage as we note from the Leave and license agreement which was signed on 29th March, 2019 and the tenure of the Agreement was 60 months commencing from 28th August, 2018 and the licensee fess was @ Rs.49,77,880/- per month. We note all this corresponds to the facts in the sublease deed signed on 28th August, 2018 pursuant to the MoS and MOU, culminating in the Sublease deed. We also note that subsequent contracts incorporating earlier obligations bind parties and related entities.

63. The Appellant relies on the judicial pronouncements of the Supreme Court, including **Joshi Technologies International Inc. v. Union of India,**

**(2015) 7 SCC 728 and Roop Kumar v. Mohan Thedani, (2003) 6 SCC 595**, which recognize the supremacy of a registered contract and prohibit the introduction of contradictory prior negotiations or agreements to diminish contractual liabilities. **Section 94 of the Bharatiya Sakshya Adhiniyam, 2023** (formerly Section 91 of the Indian Evidence Act, 1872) directly addresses the weight of such documents. The Appellant argues that the claim is not subject to any pre-existing dispute within the meaning of Section 8(2)(a) of the IBC. It is emphasized that the Corporate Debtor's admissions and the license payments admitted demonstrate an undisputed sum sufficient to trigger the CIRP. The Appellant invokes **Mobilox Innovations Pvt. Ltd. v. Kirusa Software Pvt. Ltd., (2018) 1 SCC 353**, which clarified that "a dispute must be genuine, not spurious," and "must have existed at the time of the notice." In summary, Appellant contends that the debt arises under a legally binding and registered License Agreement that absorbs prior settlements among the Reliance group entities. The liability admitted by the Corporate Debtor exceeds the threshold amount under Section 4 of the IBC, qualifying the operational creditor's application for initiation of the CIRP.

64. We find that prior to the License Agreement dated 29 March 2019, the parties entered into several settlement documents including the Memorandum of Settlement ("MoS"), the Memorandum of Understanding ("MoU"), and an undated Letter of Understanding ("LoU"). These agreements, which involved the Appellant as well as related Reliance group companies, including Reliance Communications Limited ("RCom," undergoing insolvency), explicitly settled and adjusted the liabilities pertaining to rental

dues, and such arrangements were implemented and acted upon, thus forming the true basis of the liabilities. We are inclined to agree with the Respondent that these settlement agreements are binding and constitute the true, operative contractual framework controlling the liabilities and obligations of the parties. But in the facts and circumstances of the case we not disputes which require interpretation of contractual obligations, and thus the determination of debt as claimed in the demand notice comes under cloud. We also observe that Respondent has strongly denied and disputes have been raised as noted below from page 218 APB in the reply of the Respondent to the Demand Notice:

> "....
>
> a. As already communicated by us on multiple occasions, there already exists a dispute between the Parties as your Notice of termination notice 21st March, 2022 was Arbitrary against the understanding of the Agreements and due to this fact, Altruist disputed your termination.
>
> b. It is a matter of record that Leave and License Agreement dated 29th March 2019 (LLA) was executed between Altruist Customer Management India Private Limited (Altruist) and the first addressee being Reliance Realty Ltd in respect of building No A-8 at Sector 1, MBP 2, TTC Industrial Area Mahape Taluka Dist Thane Navi Mumbai ("Demised Premises).
>
> c. The execution of the LLA was in reference to Memorandum of Settlement ("MOS") dated 20th August, 2018 entered into with various Reliance entities namely a) Reliance Communications Limited, b) Reliance Telecom Limited, c) Reliance Web Services Limited and d) Reliance Communication Infrastructure Limited (collectively **"Reliance").** A Memorandum of Understanding dated 20th August, 2018 **(MOU)** which was drawn from the terms of the Memorandum of Settlement dated20th August,2018 **(MOS)**

was signed by the Parties. You had agreed to abide by the terms of the MOS by signing the **MOU.**

d. As per clause a (vi) of the said MOS, in the event of termination of lease by Reliance Reality Limited, the unadjusted outstanding dues shall be payable to Altruist and all Reliance entities which had signed the MOS shall become liable to pay the dues to Altruist. By virtue of you having agreed upon the terms of the MOS, you are bound to follow the agreed terms of MOS, thus the due amounts from the Reliance share towards the rent for the Demised Premises should have been collected by you from them and besides that the due amounts to us towards our outstanding are also to be settled by you. Till date, Reliance is yet to clear the balance amounting to Rs. 14.46 crores due to Altruist Customer Management.

e. As mentioned in our previous occasions, the terms of the MOS shall prevail over all other documents signed by the Parties in this regard. Therefore, any conditions which overrides the MOS shall become invalid.

f. We are in no way in acceptance of your notice of termination which was arbitrary and without any merit and for other reasons stated herein. This is being a dispute between you and us. In terms of the MOU, MOS and Leave and License Agreement("Agreements"), any dispute or difference shall be settled through the process of Arbitration.

g. You had also failed to deposit GST which was collected from us on certain months' forms part of the dispute.

h. Since there is a definitive dispute between the Parties as stated above, your alleged demand cannot be under the purview of the IBC/NCLT..."

65. From the above, we note that Section 8 notice and subsequent Section 9 petition rely heavily on the leave and license agreement signed between the Appellant – RRL and CD – Altruist on 29th March 2019.

Even though it is signed on 29.03.2019 but the *"license shall commence from 28 Nov. 2018"* (Clause (a) of Article II relating to license fees) clearly stands out. A question arises that, if it has to be read as a standalone agreement why from a backdate of 28 Nov. 2018. Further, schedule of property mentioned herein in this L & L agreement is same as with any other documents i.e. MOS & MOU. Memorandum of Settlement says about contractual obligations and also states rent would be Rs.49,97,788/-, which was the total rent which was supposed to be charged after three months in proportion to 20:80 ratio and lock in period was one year. A similar obligation in Clause (a) of Article (ii) under leave and License Agreement of 29.03.2019 [@119 APB] also proves the facts that lease was supposed to commence from 28.11.2018, which is much prior from the execution of the said lease documents. Therefore, we find that claiming that the lease of 29th March 2019 has no reference of Memorandum of Settlement or other documents dated 20.08.2018 is incorrect and needs further determination. We find that as contract of lease came into existence due to the existence of Memorandum of Settlement, Memorandum of Understanding and Letter of Undertaking executed. Therefore, contract will be implied by law or by the conduct of the parties and creates legally binding obligation even without written and spoken terms in the said lease deed and all the documents had to be read con-jointly not separately.

66. We further note that the Appellant's claim of an admitted 20% liability by the Corporate Debtor is only a part of the picture, with the Respondent disputing the balance as settled in the MoS and LoU. We note that only after signing Memorandum of Settlement and Memorandum of Understanding and letter of understanding between Appellant and parental company, the Corporate Debtor agreed to settle his dues of Rs Rs.32,86,56,444/- and agreed to take the said premises on lease. Thereafter lease deeds comes into existence and lease deeds in question cannot be read in bits and pieces and stand alone. The moment there is any conflict between the terms of MOS, MOU all executed on the same day i.e. 20.08.2018 and undated letter of understanding - to settle the dispute between the parental company which binds its Group Company i.e. Appellant to give the premises on rent to settle its outstanding towards Corporate Debtor and when it is duly signed by the Appellant Company and acted on the same till 2020 by taking 20% rent from Corporate Debtor from 2018, one cannot say that the said dues of 80% is also a liability of the Corporate Debtor. Respondent's canvasses convincing arguments that Appellant's should have gone to Arbitration for the same and not Section 9 until the dues and the duration for the which the MOS and MOU and letter of Understanding was signed between the parties is lapsed. We thus find that such disputes concerning admissibility and quantum of debt are to be adjudged outside the insolvency proceedings.

67. Further we note the MOS, MOU has been arrived at for settlement of the dues of Reliance Companies of about Rs. 32.87 Crores towards the CD. Now since the lease is being terminated by the Appellate, CD raises a ground

that its Rs.32.87 crores should be settled before they could be dispossessed. It is a dispute – which is pre-existing and prior to the issue of the demand notice.

68. The Respondent asserts that a genuine and bona fide dispute exists regarding the amount claimed by the Appellant. The dispute involves questions of the quantum of the debt, the effect of the previous settlement agreements, and the precise portion of liabilities admitted and payable by the Corporate Debtor. This dispute has been expressed through correspondence and existing legal and contractual documents. We find this dispute is not a moonshine or illusory and cannot be determined in the insolvency proceedings. Furthermore, we note that dispute is prior to the issuance of the demand notice under Section 8 of the IBC, thereby triggering the provisions under Section 9(5)(ii) of the Code which mandate the rejection of the Section 9 petition where there is a pre-existing dispute as to the debt or default. We note that the Hon'ble **Supreme Court in Mobilox Innovations Pvt. Ltd. v. Kirusa Software Pvt. Ltd., (2018) 1 SCC 353**, expounded that a dispute must be existing and real, and mere plea or averment of dispute in the reply is insufficient unless it has existed prior to the demand notice. We find in this case that a disputed fact needs to be appreciated based on evidence under Indian Evidence Act, and in such a situation the adjudicating authority's role is limited to ascertaining if the genuine dispute is present or not. Even evidence such as an Arbitration notice or termination notice or reply to termination notice are signals of pre-existing disputes and this Tribunal

should not get involved in sifting through complex contentions on giving a judgment on merits of the dispute.

69. We also note that the Adjudicating Authority in the impugned order has concluded as follows:

> "....
> 4...
>
> VIII. From the above, it is apparent that this is not a clear case of rent being due from the Corporate Debtor to the Financial Creditor and not having been paid, therefore, constituting a debt and default. Since, in respect of settlement of the dues of the Corporate Debtor to the Group Companies through the rent amount payable to the Financial Creditor a large part i.e. 80% of the rent due was to be paid by another company, other than the Corporate Debtor.
>
> IX. The Letter of Understanding which has also been signed by the Financial Creditor, further goes to show that the liability for the entire rent cannot be placed upon the Corporate debtor and that the corresponding debt cannot be fully attributed to the Corporate Debtor.
>
> X. The contention of the Financial Creditor is that reliance be placed only on the Lease and License Agreement (which has been entered between the Financial Creditor and the Corporate Debtor) only and not on other Agreements such as the MoS, MoU and Letter of Understanding.
>
> XI. In our view, at this stage this contention is misplaced because in respect of other issues the Financial Creditor itself has relied upon provisions of the MoS, MoU, etc. Notably in respect of the payment of TDS which as per the MoS was to be done for the total rent amount including that of 80% which was to be paid by RCOM by the Corporate Debtor. The Letter of Understanding is also significant since the Financial Creditor is also a signatory to that and which clearly stipulates that in case of conflict amongst any of the Agreements/Lease deed,

the terms of the MoS shall prevail. It is also clear from the records that the Financial Creditor had full knowledge of all the Agreements entered into between the Group Companies and the Corporate Debtor including the MoS, MoU and Letter of Understanding. Hence, it is very clear that the dispute is deeply embedded in the matter with regard to payment of rent by the Corporate Debtor alone or jointly by the Corporate Debtor and another Group.

5. It is also noteworthy that for eviction of the Corporate Debtor from the premises, the Financial Creditor has filed a suit before the Civil Court in Thane, Mumbai.

6. In the light of the above observations, we are not inclined to agree with the submissions of the Operational Creditor that this is an Operational debt which the Corporate Debtor was liable to pay in its entirety, since other parties also had the responsibility for payment. This is a pre- existing dispute raised by the Corporate Debtor which is substantiated by the records and submissions....."

70. We observe that the vehemently argues that the Corporate Debtor has admitted its liability towards 20% of the rent payable each month to the Appellant. Appellant claims that even if only 20% of the rent is taken into account, the debt payable still crosses the threshold — beyond INR 1 crore and satisfies the condition for initiation of insolvency proceedings against the Corporate Debtor. Corporate Debtor has only made part payment towards License Fee and since April 2021, the Corporate Debtor has stopped making payment towards the License Fee. Thus, even if only the assumed 20% obligation of the Corporate Debtor to pay make payment towards License Fees is considered, the same crosses the minimum requirement of INR 1 crore under the Code as of September 2022. We note that such an argument presumes that the Adjudicating Authority has to adjudicate on the amount

payable in the chequered background of the debt. It is plainly clear from the materials placed on record that claims cannot erase the original claim of the Corporate Debtor and which is the dispute which is much prior to section 8 demand notice and it the CD had raised it in its reply to the Section 8 demand notice which links the issue of original debt for the settlement for which MOS and LOU were signed and the present premises of the FC was allowed to be used on lease. We also observe that this is not a spurious or moonshine dispute but it is a substantive dispute, for which insolvency proceedings under Section 9 of the Code cannot be invoked.

71. Thus, we observe that the dispute is deeply embedded in the matter with regard to payment of rent by the Corporate Debtor alone or jointly by the Corporate Debtor and another group company. Also, for eviction of the Corporate Debtor from the premises, the Financial Creditor has filed a suit before the Civil Court in Thane, Mumbai. Thus, we have no hesitation in observing that this is a case of pre-existing dispute, raised by the Corporate Debtor, which is substantiated by the records and submissions and is not a spurious or moonshine dispute and the present appeal doesn't merit consideration.

**Conclusions**

72. In the above facts and circumstances of the present case, we therefore don't find any infirmity in the conclusions and the findings of the Adjudicating Authority. Adjudicating Authority correctly rejected the Section 9 petition due to the existence of a bona fide dispute.

**Orders**

73. The appeal filed by Appellant-Reliance Realty Limited is accordingly dismissed with no costs. All pending applications, if any, shall stand disposed of. Operational Creditor/petitioner is at liberty to pursue his claims before appropriate forum in accordance with the applicable law.

**[Justice N Seshasayee]**
**Member (Judicial)**

**[Arun Baroka]**
**Member (Technical)**

**[Indevar Pandey]**
**Member (Technical)**

**New Delhi.**
**March 09, 2026.**

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