NATIONAL COMPANY LAW APPELLATE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

Company Appeal (AT) (Insolvency) No. 1056 of 2025

(Arising out of the Order dated 09.05.2025 passed by the 'Adjudicating Authority' (National Company Law Tribunal, New Delhi Bench) in C.P.(I.B.) No. 176 of 2023 and I.A. No. 4625 of 2024 in C.P.(I.B.) No. 176 of 2023)

IN THE MATTER OF:

Uniworth Enterprises LLP
Having its registered office at:
804, B-Wing, Siddhivinayak Tower,
Nr. Katari Arcade, Off. S. G. Highway,
Makarba, Ahmedabad 380051
Gujarat, India **...Appellant**

Versus

M/s. Starco Metaplast Private Limited
1/536, C-12, Gali No. 4-A, Friends Colony,
Industrial Area, GT Road, Shahdara
Delhi East Delhi, DL 110095 IN **...Respondent**

Present:

For Appellant : Ms. Natasha Dhruman Shah, Advocate

For Respondent : Mr. S.B. Chaturvedi, Mr. Akshay Sharma, Mr. R.L. Syngal and Mr. Paritosh Chaturvedi, Advocates

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

[Per: Arun Baroka, Member (Technical)]

The present Appeal has been filed under Section 61 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as "Code") against the orders dated 09.05.2025 (hereinafter referred to as "impugned orders") passed by the Hon'ble National Company Law Tribunal, New Delhi, Bench -IV (hereinafter referred to as "Adjudicating Authority") in C.P.(IB) No. 176 of 2023 and I.A. No. 4625 of 2024 in C.P.(IB) No. 176 of 2023 wherein the Learned

Adjudicating Authority has rejected the Application under Section 9 of the code preferred by the appellant seeking, interalia, initiation/ commencement of Corporate Insolvency Resolution Process of the respondent i.e. corporate debtor and allowing the application filed by the Corporate Debtor/Respondent seeking, interalia, permission to file additional documents after conclusion of final arguments of both the parties.

2. The Appellant – Uniworth Enterprises LLP claims an undisputed operational debt of ₹2,83,84,205/- comprising principal of ₹2,32,60,608/- and interest of ₹51,23,597/-) for pharma packaging materials supplied to the Corporate Debtor – Starco Metaplast Private Limited between August and November 2021. The Appellant argues that the NCLT erred in concluding a "pre-existing dispute" based on the Corporate Debtor's claims of non-supply and related debit notes, especially since the Corporate Debtor continued to place orders and failed to substantiate claims for a significant portion of the alleged non-supplied goods.

3. The Appellant is aggrieved of NCLT allowing of the Corporate Debtor to file additional documents (WhatsApp chats and a letter to Oxyzo Financial Services) after the conclusion of final arguments, without proper justification for the delay and without these documents being part of the initial pleadings. The Appellant contends that this violated principles of natural justice and procedural fairness. The appeal seeks to quash and set aside both the NCLT's order rejecting the Section 9 application and the order allowing the filing of additional documents.

4. Appellant – Uniworth Enterprises LLP is an Operational Creditor and manufacturer of pharma packaging materials. The Corporate Debtor – Starco Metaplast Private Limited approached the Operational Creditor – Uniworth Enterprises LLP for purchase of pharma packaging materials from 2019. Corporate Debtor placed purchase orders for a total quantity of 2,21,573 kgs of goods, amounting to ₹4,07,63,236/- from 07.07.2021 to 04.10.2021. The Operational Creditor supplied 1,35,567 kgs of goods amounting to ₹2,53,88,620/- and raised invoices from the period from 05.08.2021 to 09.11.2021. For short supply of about 85,250 kgs, the Corporate Debtor issued debit notes totalling ₹40,84,275/- between 15.07.2021 to 02.12.2021. The Operational Creditor on 23.08.2022 sent an email to the Corporate Debtor requesting payment of pending dues of ₹2,32,65,008/-. Both parties held a meeting in November 2022 to reconcile the accounts, where it was decided that a credit note of ₹40,84,725/- would be issued by the Operational Creditor. if the Corporate Debtor paid ₹1,91,80,733/- or issued post-dated cheques.

5. Operational Creditor sent an email to the Corporate Debtor on 04.01.2023 again requesting the post-dated cheques to settle outstanding dues and enable the credit note issuance. On 23.01.2023 Operational Creditor issued a demand notice under Form 3 and Form 4 of the IBC Rules, requesting payment of ₹2,32,60,608/- plus interest which is ₹2,83,84,205/- including the interest. On 09.02.2023 Corporate Debtor replied to the demand notice accepting payment of ₹1,91,80,733/- in monthly instalments

of ₹15,00,000/- each. Thereafter on 22.02.2023 the Operational Creditor filed an Application under Section 9 of the Code for initiation of CIRP against the Corporate Debtor which was registered as C.P.(IB) No. 176 of 2023 on 24.03.2023. The matter has been heard by NCLT on various dates and on 11.09.2024 an IA No. 4625/2024 was filed by the Corporate Debtor for filing additional documents which was objected to by the Operational Creditor on the point of maintainability and issuance of notice. On 09.05.2025, the impugned order was passed by the NCLT rejecting C.P.(IB) No. 176 of 2023 i.e. Section 9 application and further allowing I.A. No. 4625 of 2024 which was the application for additional documents.

6. The Appellant – Operational Creditor claims that the maintainability of IA No. 4625/2024 was not argued and it was dismissed and the documents placed in this IA were relied upon by the Adjudicating Authority while dismissing Section 9 Application.

7. Appellant claims that the so-called a pre-existing dispute is not a bonafide or truly pre-existing dispute which was raised prior to the issuance of the demand notice dated 23.01.2023. The Operational Creditor is seeking for payment of goods actually supplied which is 1,35,567 kgs. and for non-supply of 85,250 kgs. of material for which debit note amounting to ₹40,84,275/- was allegedly issued does not constitute a bonafide or truly pre-existing dispute. The Appellant further claims that the Corporate Debtor continued to place purchase orders even after the alleged dispute arose indicating acceptance of supply and waiver of dispute. And this is in

contravention to the judgment of Hon'ble Supreme Court in **Mobilox Innovations Pvt. Ltd. v. Kirusa Software Pvt. Ltd. (2018) 1 SCC 353**, which requires a "genuine dispute".

8. Appellant also contends that the Adjudicating Authority committed a procedural impropriety by allowing the Corporate Debtor to file additional documents specifically WhatsApp chats and a letter to Oxyzo Financial Services dated 24.04.2024 after the conclusion of final arguments and without any justifiable cause for their belated production. Appellant claims that by allowing such filing of additional documents prior to the passing of a final order and which is the basis of NCLT's finding of a pre-existing dispute has deprived the Appellant an opportunity to defend its case.

9. The Corporate Debtor had admitted to an outstanding payment of ₹1,91,80,733/- in their reply to the demand notice on February 9, 2023, accepting the payment in monthly instalments of ₹15,00,000/- to be made.

10. Appellant claims that the payments made by the Corporate Debtor and the amounts received through Oxyzo Financial Services were appropriated by the Operational Creditor on a FIFO basis against previously pending invoices as is customary in a running account between the parties. Moreover, the Corporate Debtor had not provided any specific appropriate instructions for these payments. And therefore, NCLT's implied finding that the payments settled the current outstanding invoices is erroneous.

11. The Adjudicating Authority has also not considered the inclusion of interest @ 15% on delayed payments which was explicitly agreed on in the invoices.

12. It is also contended by the Appellant that Corporate Debtor had failed to provide any justification for the delay in filing the additional documents, which were in their knowledge and possession during the initial stage of from the initial stages of the proceedings. Further the main pleadings of the Corporate Debtor has no averments referring to these documents or asserting any lack of prior knowledge.

13. Appellant also claims that the Corporate Debtor failed to provide adequate proof for a significant portion of the alleged non-supplied goods. Specifically, 15,801 kgs out of 85250 kgs was claimed in that debit notes. This directly impacts the legitimacy of the pre-existing dispute.

14. The Corporate Debtor did not adhere to the proposed settlement agreement which involved the Operational Creditor issuing a credit note of ₹40,84,725/- upon the CDs commitment to make payment of ₹191,80,733 or issue post-dated cheques. This non-compliance further demonstrate the CDs default and lack of bonafide intention. Therefore, the order passed by the NCLAT dated 09.05.2025 has to be set aside.

15. Respondent claims that the payment received from the Respondent were adjusted against earlier invoices leaving the claimed amount as outstanding and forming the basis of the Section 9 Application is misleading

as the earlier invoices against which such alleged adjustments were made pertain to Covid 19 period and specifically barred by Section 10A of the Code. The respondent brings to our notice that the Operational Creditor had claimed payment against invoices raised between the 05.08.2021 and 09.11.2021. During this period the Respondent had made payments amounting to ₹2,24,19,103/-. Out of this ₹1.98 Cr. was paid against the very invoices relied by the Operational Creditor in its Section 9 Application. This reduces the total amount which is outstanding to be less than one crore and therefore, Section 9 is not maintainable.

16. Respondent claims that Appellant has adjusted these payments towards earlier dues of the Respondent without disclosing that those earlier invoices pertained to Covid 19 period which is explicitly protected under Section 10A of the Code. And such an adjustment is in direct contravention of the statutory mandate of Section 10A which categorically prohibits the inclusion of any debt arising between 25.03.2020 and 24.03.2021 in his Section 9 Application. It claims that no application can ever be filed for initiating CIRP of a Corporate Debtor for default period from 25.03.2020 and 24.03.2021.

17. Respondent claims that it is an admitted case of the Operational Creditor that due to short supply of the goods against the purchase orders. The Respondent CD had issued debit notes dated 01.12.2021 amounting to ₹40,84,275/- for the difference of rate the Corporate Debtor had to bear by purchasing the goods not supplied by the Operational Creditor from the third

parties and this is a pre-existing disputed amount. The parties had also exchanged several emails between them which explicitly demonstrate that the respondent had suffered huge monetary and other losses due to delay in supplies against the orders placed by the Respondent on the Corporate Debtor. Further there was change in the prices of materials forcefully and unilaterally on the higher side by the Operational Creditor on the orders already placed by the Respondent. It also claims that due to no supply made at all against the order placed by the Respondent and due to unilateral cancelling of orders by the Appellant it suffered losses. It also claims that Respondent factory was compelled to remain shut for many days owing to delay and non-supply of material by the Operational Creditor, despite confirmed purchase orders. As a consequence, the Respondent were forced to remained idle, for prolong periods leading to substantial losses. It further led to significant erosion of the customer base and long term commercial losses for the Respondent.

18. Respondent contends that the Appellant was heard at length on the application for additional documents bearing IA No. 4625/2024. Respondent claims that in the hearing on 25.10.2024, both the parties made detailed submissions on the Interlocutory Application. Thereafter, the parties also filed their written submissions. Respondent claims that the Appellant has for the first time in its rejoinder claimed that the Operational Creditor had adjusted towards the pending dues of the Respondent without disclosing that the

earlier invoices during the Covid 19 period and barred under Section 10A of the Code.

19. Respondent also brings to our notice that since the Appellant had questioned the authenticity of the documents of Oxyzo Financial Services Limited, it had to get the confirmatory documents from them and for that reason there was a delay in submitting the additional documents.

20. Respondent also claims that Operational Creditor falsely claims that it was never informed that the payments were made against specific invoices mentioned in the Application for this purpose the Respondent has relied upon WhatsApp chat and emails between the Appellant – Operational Creditor and Respondent showing communication of payment of ₹1.15 Cr. against specific purchase orders / invoices. Respondent contends that the Operational Creditor has not denied the authenticity of the WhatsApp chats, the only defence is that a delay in filing the same.

Analysis and Evaluation

21. We have heard counsels of both sides and perused the material placed on record. Basis the material placed on the record, and hearing both sides, the main issue before us is whether there is a pre-existing dispute regarding the operational debt under Section 8(2)(a) of the Insolvency and Bankruptcy Code, 2016. The other ancillary issue is relating to the dispute regarding the non-supplied quantity of goods and the corresponding debit notes, which could constitute a pre-existing dispute. Also, whether there was any dispute

regarding the principle of running account and first in first out (FIFO) method of payment against the outstanding debt.

22. Briefly speaking the Operational Creditor – M/s Uniworth Enterprises LLP had supplied goods to Corporate Debtor – M/s. Starco Metaplast Private Limited over a period of time and as on 05.08.2021 the total outstanding dues of the Operational Creditor stood at ₹2,26,92,720. It is contended by the Appellant that there was a running account between the Operational Creditor and the Corporate Debtor. And the outstanding balance in this running account was tried to be resolved through mutual discussions. To reconcile the accounts, both the parties held a meeting and it was agreed that a credit note would be issued by the Operational Creditor for ₹40,84,725/- on the condition that the Corporate Debtor shall make the payment of ₹1,91,80,733/- for the supplies made or in the alternative issue post-dated cheques ₹15 lakhs each for a total amount of ₹1,91,80,733/-. Assuming that the credit note was to be issued by the Operational Creditor as per the above agreement for short supply, the corporate debtor had admitted that there is an outstanding balance of ₹1,91,80,733/- and the Corporate Debtor would be making this payment in post-dated cheques of ₹15,00,000/- each for ₹1,91,80,733/-. In such a situation we find that there is an admitted debt which is more than the threshold and we can un hesitatingly conclude that the petition should be accepted under Section 9.

23. Now we look into as to how the Adjudicating Authority has dismissed the petition and the relevant operative part of the impugned order is as follows:

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> 13. In view of the foregoing, it is noted that, as per the submissions of the Corporate Debtor, payments have been made by it, through its financier, in relation to the same invoices which are the subject matter of the present application. As per the averments of the Corporate Debtor, it has submitted that an amount of Rs. 1,98,00,000/- has been remitted by the Corporate Debtor to the Operational Creditor against these specific invoices, which are being alleged as an unpaid amount of Rs. 2,83,84,205/- as per Part-IV of Form 5 by the Applicant. The Applicant has submitted that the amounts credited by the Corporate Debtor were adjusted by the Operational Creditor against back-dated invoices on the basis of the First-In-First-Out (FIFO) method, towards the alleged pending dues. However, it is pertinent to observe that the documentary evidence on record clearly indicates that the payments were made by the Corporate Debtor against specific and identified invoices. In such circumstances, the contention of the Applicant-that the said payments were appropriated towards older dues based on the First-In-First-Out (FIFO) method-- cannot be sustained. The adjustment of funds in a manner contrary to the express remittance instructions, particularly when specific invoices have been discharged, is untenable in the present proceedings. Accordingly, the plea of the Applicant stands discredited to that extent. The appropriate remedy for such a breach may lie in an alternate forum or jurisdiction and not necessarily before the Adjudicating Authority under the Code.
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> 14. Upon a careful examination of the facts of the present case, it becomes evident that there exist disputes and disagreements concerning the alleged outstanding amount claimed by the Applicant/Operational

Creditor, which arose prior to the issuance of the statutory demand notice and the filing of the present application, particularly in relation to the invoices raised by the Applicant.

15. It is further observed that the minimum threshold limit of Rs. 1 Crore as laid down under Section 4 of the Code is the statutory requirement which has to be mandatorily complied with and no person shall be entitled to have the privilege of not complying with the statutory requirements. The threshold limit was increased from Rs. 1 lakh to 1 crore vide notification dated 24.03.2020 and the present application was filed on 18.05.2023. Therefore, the present petition failed to meet the minimum threshold amount of Rs. 1 crore. Hence, the present petition is not maintainable and is liable to be dismissed on this ground alone.

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24. Now we delve into the issue of the dispute in the claim of the operational creditor. We note that the corporate debtor had admitted to an outstanding payment of ₹19,180,733/- in their reply to the demand notice on February 9, 2023, accepting that payment in monthly instalments of ₹15 lakhs was to be paid. It will be useful to extract the reply to the demand notice, which is as follows:

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12. That as per your demand notice your demand is totally wrong and disputed because my client maintaining a running account in which my client has paid more than Rs.9,03,97,920.98 to you since April 2020 and Rs.12917/- is paid on 31/03/2022 in form of TDS. The payment always made on account which is more than Rs.9,03,97,920.98 as a lum sum and not paid invoice to invoice so it cannot say that the invoices for payment in question are not paid. Hence your demand notice is totally unjust and disputed considering the above mentioned payments made by my client.

13. That It is further point out that the above demand from your organization is already under dispute and on the said dispute; you admittedly, have had various oral and written communications with my client. That your team and my client were a mutual agreement which was quite beautifully summarized in an email received from your team on 04th January 2023.

The above mail can be further numerated as following:

- Your firm will issue a credit note of Rs.40,84,275/- (amount equivalent to debit note number GST/03, GST/04 , GST/05, GST/06, GST/07, GST/08, GST/09 Dated 01/12/2021 of my client);

- My Client will make the payments to you for balance amount in monthly instalments with each instalment of Rs. 15,00,000/- with last instalment to be the difference in monthly intervals.

14. That believing the said representation, assurance and commitment made by your team, my client was assured but till day the credit note from you is not yet received by which the post-dated cheques could not be issued.

15. That it is submitted that from December 2021, my client has been continuously following-up with your team to provide a credit note equalling the losses my client. 16. That, for the reasons stated herein, you are liable to pay too my client not only Rs. 40,84,275/- and other losses and damages of Rs.55,00,000/-.

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25. From the above reply to Section 8 demand notice, we find that the Corporate Debtor has accepted that the outstanding amount, which was to be paid as described above; however, the corporate debtor did not make any payment because the credit note was not issued by the Operational Creditor.

Assuming that the Operational Creditor had not made a credit note of ₹4,084,275/-, we find that after deducting this amount, the outstanding, which was to be paid by the Operational Creditor is more than the threshold amount and the petition under Section 9 could be admitted.

26. The Corporate Debtor has accepted about the settlement which is noted at page 193 of APB, that the Operational Creditor will issue a credit note of ₹40,84,275/- and the Corporate Debtor will pay the balance amount in monthly instalment of ₹50/- lakhs each. Respondent has also further claimed damages of ₹55/ lakhs and also claimed to have filed a commercial suit. Respondent has claimed that since the Appellant has failed to issue the credit note to the Corporate Debtor and there are various issues of delay of supply of material, therefore, there is an existence of dispute pending between them which is prior to issuance of the notice on the grounds of deficiency in services and poor quality of work.

27. Basis the record we do not find that this dimension of the dispute is a moonshine and spurious dispute deserving rejection of the section 9 petition.

28. The Appellant has provided another dimension to the dispute, which is that it made payment on invoice basis and not on running account[1] basis.

[1] In Black's Law Dictionary, 6th edition,
Running account: An open unsettled account, as distinguished from a stated and liquidated Running accounts mean mutual accounts and reciprocal demands between the parties, which accounts and demands remain open and unsettled.
Open & Unsettled is the direct opposite of a "stated and liquidated account," meaning the final balance is not yet fixed. Transactions remain open to future adjustment.
Mutual Demands: It involves ongoing credit where both parties may owe each other or have recurring exchanges.

We find that such an argument of the Corporate Debtor is not based on the records and its own admitted position of the Corporate Debtor borne out from the records in the appeal paper book. We find that this is corroborated by the its acceptance of paying on account, which is noted in the response to the demand notice dated 23.01.2023, under Section 8, issued on 09.02.2023 by the advocate of the corporate debtor as noted by us here in earlier.

29. We also note two contemporaneous emails dated 23.08.2022 and 04.01.2023 at page 170 and 172 of APB giving the details of the discussions for settlement of the accounts. Such discussion is also confirmed from the reply of the Corporate Debtor in response to Section 8 demand notice which is at page 192 of APB. In the said reply to Section 8 demand notice, it is accepted by the Corporate Debtor that they were maintaining a running account, which is extracted as below:

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> 12. That as per your demand notice your demand is totally wrong and disputed because my client maintaining a running account in which my client has paid more than Rs.9,03,97,920.98 to you since April 2020 and Rs.12917/-is paid on 31/03/2022 in form of TDS. <u>The payment always made on account which is more than Rs. 9,03,97,920.98 as a lum sum and not paid invoice to invoice so it cannot say that the invoices for payment in question are not paid. Hence your demand notice is totally unjust and disputed considering the above mentioned payments made by my client.</u>

Continuous Relationship: Rather than being a series of isolated, one-time sales or standalone payments, it signifies an ongoing financial arrangement (such as a running balance with a contractor or a business line of credit)

> 13. That It is further point out that the above demand from your organization is already under dispute and on the said dispute; you admittedly, have had various oral and written communications with my client. That your team and my client were a mutual agreement which was quite beautifully summarized in an email received from your team on 04th January 2023.

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Thus, we find that the Corporate Debtor itself had accepted, had admitted the position that there was a running account between the Corporate Debtor and the Operational Creditor.

30. The Appellant has also relied on the judgment of the Hon'ble Supreme Court in **Asset Reconstruction Company (India) Ltd. vs Tulip Star Hotels Ltd. and others, 2022 SCC Online 944**. In this judgment the Hon'ble Supreme Court has clearly brought out that the ordinary rule with regard to payments by the debtor, which is unappropriated either to principal or interest, is that they are first to be applied to the discharge of interest. The normal rule was that in the case of a debt due with interest, any payment made by the debtor was in the first instance to be applied towards satisfaction of interest and thereafter to the principal.

31. The Appellant has also placed its reliance on another judgment of the Hon'ble Supreme Court in **Industrial Credit and Development Syndicate v. Smita Bain, H. Patel and others, 1999 SCC Online SC 144**. In this judgment the Hon'ble Supreme Court has held that how the payment is to be adjusted, is the option of the creditor to make adjustment first of the interest

and then of the principal. If the debtor has indicated the manner in which the appropriation is to be made, then the creditor has no choice to apply the payment in a different manner. He may not agree to the mode of the payment, in which case he must not accept the payment and refund the amount to the debtor.

32. Both the above judgments clearly bring out a principle that the debtor has to clearly indicate as to how the payment is to be adjusted and in case it is not indicated, it is up to the creditor to adjust as per its own choice. In this case it was on the basis of first in first out and in the running account which was being maintained historically.

33. The Appellant has also placed its reliance on another judgment of this Appellate Tribunal in **Beatle Teletech Ltd. v. Ercelia IT Services Pvt. Ltd., CA (AT) (Ins.) No. 1459 of 2022 (NCLAT Principal Bench Order dated 11.09.2023).** In this judgment this Appellate Tribunal has relied upon Section 60 of the Indian Contract Act[2], which provides the application of payment where the debt is to be discharged is not indicated. In this judgment this Appellate Tribunal has held that if the debtor makes any payment without any appropriation then the creditor can use his discretion to wipe out any of the remaining debts which are due. The right of appropriation lies with

[2] **Section 60 in The Indian Contract Act, 1872**

60. Application of payment where debt to be discharged is not indicated. —

Where the debtor has omitted to intimate, and there are no other circumstances indicating to which debt the payment is to be applied, the creditor may apply it at his discretion to any lawful debt actually due and payable to him from the debtor, whether its recovery is or is not barred by the law in force for the time being as to the limitations of suits.

the creditor if the debtor does not indicate in what manner the debt is to be discharged. In such circumstances the creditor has a lot of scope for exercising his rights in such a manner as to put himself in the most advantageous position. It is also a well-settled business practice that in a debt where the principal amount is outstanding and interest has also accrued on the debt, sums paid by the debtor are applied by the creditor first to the interest.

34. To further canvass the argument that the payments were made on an invoice basis and not on a running account basis, the corporate debtor had produced additional documents to show that the financial service provider had discounted the invoices and transferred the money to the account of the operational creditor.

35. We have also gone through a letter on record which is issued by the respondent issued by them to the financial service provider, namely Oxyzo Financial Services Pvt Ltd, with whom they were having a facility of disbursal of purchased finance facilities sanctioned in their favour, which provided certain credit limit to them. Obviously, such service is based on invoices which were raised by the Operational Creditor. We have gone through this letter issued by the corporate debtor to the financial service provider. and we find that this is for availing the credit facility provided by the financial service provider to them, and this cannot be equated with the payment of invoices.

36. Furthermore, the payments made through a financial service provider were also on an ad-hoc basis. It is true that the Corporate Debtor had issued instructions to finance the invoices, but there were no instructions to the Operational Creditor that these are separate payments and should not be adjusted on a first-in-first-out basis, that is, they are outside the running account. Moreover, the past practise was for a running account, and that was followed by the Operational Creditor while adjusting the amount.

INVOICE DETAILS				PAYMENTS AGAINST SPECIFIC P.O. /INVOICES	
P.O. NUMBER/DATE	P.O. Amount	INVOICE NUMBER /Date	INVOICE AMOUNT	DATE	amount
SMPL/53/2122 26/09/2021	47,20,000.00	UE1232103082 03/10/2021	46,71,927.00	RTGS 03/10/2021	30,00,000.00
				OXYZO 03/10/2021	20,00,000.00
			46,71,927.00		**50,00,000.00**
SMPL562122 28/09/2021	20,65,000.00	UE1232103212 12/10/2021	20,32,302.00	RTGS 20/10/2021	10,00,000.00
				OXYZO 20/10/2021	10,00,000.00
			20,32,302.00		**20,00,000.00**
SMPL542122 26/09/2021	47,20,000.00	UE1232103439 24/10/2021	46,87,488.00	RTGS 26/10/2021	10,00,000.00
				RTGS 28/10/2021	15,00,000.00
				RTGS 28/10/2021	10,00,000.00
				RTGS 02/11/2021	10,00,000.00
			46,87,488.00		**45,00,000.00**
GRAND TOTAL	**1,15,05,000.00**		**1,13,91,717.00**		**1,15,00,000.00**

37. The Respondent has made payment to Operational Creditor through Oxyzo Financial Services to the extent of ₹83,00,000/- and also made NEFT/RTGS payment of ₹1,08,00,000/- against the same invoices on various dates in October. Appellant brings to our notice that payments were received

on adhoc basis and not on invoice basis. Furthermore, there is no intimation as to against which invoice the payment is to be settled against and there is a consolidated ledger for all supplies.

38. From the above table we observe that the financial service provider has not provided the exact invoice amount. Illustratively, for the first invoice dated 03.10.2021 the invoice amount is ₹46,71,927/- and the financial service provider has provided only ₹20,00,000 and the Corporate Debtor has transferred ₹30,00,000/- through RTGS. This cannot be equated as payment on invoice basis when no such communication is on record from the Corporate Debtor to the operational creditor that this transfer has to be treated as payment on invoice basis as an exception to the running account. We further find that any communication between Corporate Debtor and the financial service provider is only for availing the credit facility and this cannot be termed as payment on invoice basis. Payment on invoice basis has to be the exact amount of the invoice.

39. Both for the past period for which reconciliation was attempted unsuccessfully as noted by us here in earlier and as per the above-mentioned table, we find that it is more of a running account rather than an invoice based account. In such a situation, the argument of the Respondent that it was a running account and the Appellant cannot adjust the payments made against the current invoices, against the earlier outstanding is unsustainable.

40. Basis the record and also CD's own admission, we find that such an argument cannot be accepted that it was not a running account. We do not find that this is an issue of dispute. Rather it is an admitted position of the Corporate Debtor that it was a running account.

41. To canvass that there is a dispute, the Corporate Debtor has provided another dimension that the appellant has deliberately failed to disclose that the earlier invoices, against which such alleged adjustments were made pertained to the COVID period and were specifically barred by Section 10A of the Insolvency and Bankruptcy Code, 2016, along with its proviso. In the application under Section 9, the Operational Creditor claimed payment against invoices raised between 5 August 2021 and 9 November 2021. However, the Operational Creditor suppressed a material fact from the Hon'ble NCLT, namely, that during the period 5 August 2021 to 23 November 2021, the Respondent had already made payments amounting to ₹2,24,19,103/-. Out of this, ₹1.98 crore was paid against the very invoices relied upon by the Operational Creditor in its Section 9 application. It was only in its rejoinder that the Operational Creditor, for the first time, admitted that the Respondent had paid ₹2.24 crore during the period 6 August 2021 to 23 November 2021. However, it attempted to justify this by stating that such payments had been adjusted towards earlier dues of the Respondent, without disclosing that those earlier invoices pertained to the COVID period, which is explicitly protected under Section 10A of the IBC. Such an adjustment is in direct contravention of the statutory mandate under Section

10A[3], which categorically prohibits the inclusion of any debt arising between 25 March 2020 and 24 March 2021 in a Section 9 application. The corporate debtor claims that Operational Creditor has very cleverly misappropriated the payment of ₹1.98 Crores out of ₹2.24 Crores, made by the Respondent against the very same invoices claimed in its application violating the specific statutory mandate of Section 10A that no application can ever be filed for initiating of Corporate Insolvency Resolution Process of a Corporate Debtor for the default period from 25.03.2020 to 24.03.2021. It is submitted that the Operational Creditor in a capricious and malicious manner adjusted the amount paid by the Respondent to the previous invoices according to its own whims and fancies though no previous invoices were mentioned in the application.

42. To counter 10A period arguments the respondent has clarified that they have not misappropriated the payment and even the Respondent was aware that the amounts were being adjusted on FIFO basis as a customary practice of running account. Further the outstanding amount has been mentioned in various communication as well as application / submissions to the tribunals. Considering that the account was a running account and that at no point in time the respondent has ever communicated or intimated to the Appellant

[3] ***Section 10A: Suspension of initiation of corporate insolvency resolution process*:**
Notwithstanding anything contained in sections 7,9 & 10, no application for initiation of corporate insolvency resolution process of a corporate debtor shall be filed, for any default arising on or after 25th March, 2020 for a period of six months or such further period, not exceeding one year from such date, as may be notified in this behalf:
Provided that no application shall ever be filed for initiation of corporate insolvency resolution process of a corporate debtor for the said default occurring during the said period.

that the payments that purportedly made were to be treated wards the subject invoice, the appellant possesses the right under law to appropriate the payments towards the debts as it may deem fit. Even otherwise, the Appellant has made payment as per the prevalent business practice of settling older invoices which were due and outstanding for a longer period than the subject invoices. In relation to raising the defence of the invoices falling under the prohibited period of Section 10 A does not stand since the subject invoices are not within the said period.

43. We agree with the arguments of the Appellant and we find that the defence is illusory, moonshine and a sheer afterthought and cannot constitute a pre-existing dispute.

44. The Respondent has also claimed that there is deficiency of service due to short supply and therefore there is a dispute and the Respondent has relied upon the judgment of **Swiss Ribbons Private Limited & Anr. v. Union of India and Ors (2019) 4 SCC 17**. Moreover, the Appellant has contended that the parties were attempting to reconcile the accounts in November 2022, which does not demonstrate any dispute. Furthermore, the Operational Creditor is claiming only the amount with respect to the goods that have been supplied i.e. 135567 kgs only and this was conveyed to the Corporate Debtor vide email dated 05.09.2021.

45. The Respondent also claims that they had issued debit notes for an amount of ₹40,84,275/- and which in turn has been admitted by the

Appellant. The Appellant brings to our notice that no debit notes were raised and uploaded on the GST portal as no reference was provided. Respondent contends that there is a delay of supply and as per the purchase orders, the Operational Creditor was required to deliver the goods immediately. However, there was an inordinate delay of supply. Appellant brings to our notice that there was some delay due to covid 19 pandemic but when goods were delivered the same were consumed by the Corporate Debtor.

46. We observe that the Corporate Debtor's claim of non-supply of 85,250 kgs of material, for which debit notes amounting to ₹40,84,427/- were alleged to be issued, does not constitute a bona fide or truly existing dispute which was raised prior to the Demand Notice dated January 23, 2023. We further note that the operational creditors' claim is only for the goods actually supplied, which is 135,567 kgs. Furthermore, the corporate debtor continued to place purchase orders even after the alleged dispute arose, which indicates acceptance of supply and waiver of dispute in terms of the judgement of the Hon'ble Supreme Court in **Mobilox Innovations (supra).** We do not consider this to be a genuine dispute and can be described as a spurious and moonshine dispute.

47. The Appellant has raised another issue which is relating to allowing the corporate debtor to file additional documents, specifically WhatsApp chats and a letter to Oxyzo Financial Services, after the conclusion of final arguments and without any justifiable cause for their belated production. Appellant claims that the order dated 09.05.2024, passed in IA No. 4625 of

2024, allowing the additional documents to be taken on record, is perverse. The application was filed after the final hearing was concluded with the sole object to delay the proceedings and mislead the Adjudicating Authority. Appellant had raised objections on the maintainability and it was not provided any opportunity to controvert the documents. The Appellant claims that these documents were in the possession of the Corporate Debtor during the initial stages of the proceedings, and their belated filing violated the principles of natural justice and procedural fairness. We note that the Adjudicating Authority has observed that there is no absolute bar on the filing of additional documents at any stage prior to the passing of a final order. Furthermore, it was in the context that the Operational Creditor has described some of the documents as forged and fabricated in its rejoinder before the Adjudicating Authority. The respondent wanted to clarify, and for that reason it had filed additional documents. We do not find these objections to be sustainable, and we overrule these objections.

48. With respect to claim of interest, the respondent claims that interest cannot be claimed as the Operational Creditor had itself claimed ₹1,91,80,773/- as final settlement of payments. The Appellant on the other hand, brings to our notice that the invoice document already mentioned the applicable delay interest.

49. With respect to the claim of damages of ₹55,00,000/- the Appellant brings to our notice that there is no justification and it cannot be set off. With respect to the filing of the claim for the damages and pre-litigation mediation.

The Appellant brings to our notice that mediation was initiated after demand notice was delivered on 09.02.2022.

50. The Adjudicating Authority while passing the impugned order has come to a conclusion that the application filed by the Appellant – M/s Uniworth Enterprises LLP under Section 9 is not maintainable and is liable to be dismissed as per order dated 09.05.2025 and on the same day IA No. 4625/2024 was allowed for taking additional documents on record.

51. Appellant has vehemently argued that they were not given opportunity to defend on the maintainability of permitting additional documents to be taken on record. The main objection of the Appellant which has been noted by the Adjudicating Authority is that respondent had submitted forged and fabricated documents claiming that Oxyzo Financial Services made payments against specific invoices. Adjudicating Authority has noted confirmatory documents filed by the Respondent including a certificate dated 24.04.2024 confirming payments were made against specific invoices.

52. We also note that the Adjudicating Authority has relied on the judgment of Hon'ble Supreme Court in **Dena Bank (now Bank of Baroda) Vs. C. Shivakumar Reddy and Anr. Civil Appeal No. 1650 of 2020 in para 91** wherein it was held that there is no bar of filing documents at any time until a final order either admitting or dismissing the Application has been filed.

> "91. On a careful reading of the provisions of the IBC and in particular the provisions of Sections 7(2) to (5) IBC read with the 2016 Adjudicating Authority Rules there is no bar to the filing of documents at any time until a final order either admitting or dismissing the application has been passed."

53. Furthermore, Respondent has also filed the WhatsApp chats which were in the possession of Appellant but were not placed on record. These documents were in Appellant's knowledge and possession during the initial stages and the Adjudicating Authority has taken additional documents on record.

54. In the facts and circumstances of the case and the legal precedents, we do not find any infirmity in the order of the Adjudicating Authority in taking the additional documents on record. We uphold the order in IA No. 4625/2024 in CP (IB) No. 176/2023.

55. With respect to the main petition in CP (IB) No. 176/2023, we find that the Adjudicating Authority has come to a conclusion that there is a pre-existing disputes and disagreements concerning the alleged outstanding amount claimed by the Operational Creditor and has dismissed the Section 9 Petition.

Conclusions

56. We find that there is an admission of debt, as is noted in the reply to the demand notice issued by the corporate debtor. Furthermore, assuming that the claim of the Operational Creditor is only ₹1,91,80,773, which is admitted by the Corporate Debtor in the final settlement of payments, still it

is meeting the threshold as provided under Section 4 of the IBC. The petition meets the criteria even after the so-called damages as claimed by the corporate debtor. Furthermore, there is no dispute with respect to the quality of goods and services. The only issue was with respect to short supply of goods for which there was an agreement between the two parties for issuance of a debit note to be raised by the corporate debtor dated 01.12.2021 for ₹40,84,275/- towards alleged price difference in 85,250 kgs. With respect to the other issue of whether it was a running account between the operational creditor and the corporate debtor, we find that there was an admission of a running account in the reply of Section 8 demand notice issued by the Corporate Debtor. Furthermore, the statement of accounts also reflects that payments were made on an ad-hoc basis. We also find that there were no instructions issued by the Corporate Debtor to the Operational Creditor that payments were being made against specific invoices. However, at the stage of reply to Section 9 and during the arguments the Corporate Debtor has adopted a contrary reply and shifted its stand without any proof in support of the said stand, which is not permissible in law and reflects a mala fide conduct of the Corporate Debtor. The litigant cannot be permitted to approbate and reprobate. This has been clearly laid down by the Hon'ble Supreme Court in the following two judgments:

- **Cauvery Coffee Traders, Mangalore vs M/s Hornor Resources Company Limited, 2011 (10) SCC 420**
- **R N Gosain vs Yashpal Dheer 1992 (4) SCC 683**

Both above judgments support the case of the Appellant.

57. Based on the above analysis we can conclude, that the disputes which have been raised by the corporate debtor are moonshine and spurious and cannot be sustained legally. Therefore, the petition cannot be rejected on the grounds of pre-existing dispute.

58. We also observe that there is a record of default with the information utility, which was filed on 1.2.02.2024, and it is deemed to be authenticated and the Corporate Debtor has not raised any dispute.

Orders

59. In the noted background, we conclude that the order of the Adjudicating Authority in not allowing the Section 9 petition cannot be sustained. And accordingly, we set aside the orders of the Adjudicating Authority. We allow the Respondent to make payment of ₹2,83,84,205/- as per Part-IV of the Section 9 petition within 15 days of the issuance of this order and in case the Respondent is not able to make this payment the Corporate Debtor shall be admitted into insolvency and the Adjudicating Authority shall issue the order for admission under Section 9. All related IAs are also disposed of. No order as to costs.

[Justice Mohd. Faiz Alam Khan]
Member (Judicial)

[Arun Baroka]
Member (Technical)

New Delhi.
July 03, 2026.

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