IN THE NATIONAL COMPANY LAW TRIBUNAL MUMBAI BENCH-II

CP (IB) No. 3783/MB/2019

[Under Section 9 of the Insolvency and Bankruptcy Code, 2016 r/w Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016]

IN THE MATTER OF:

GS INDUSTRIES

[Identification Number: 27AARFG4680M1ZM]

Registered Office: Plot No. G-29/3, MIDC Satpur, Behind Bank of India, Trambak Road, Satpur Nagpur-422007, Maharashtra.

…Operational Creditor

V/s

LARSEN & TOUBRO LIMITED

[CIN: L99999MH1946PLC004768]

Registered Office: L&T House, Ballard Estate Mumbai-400001, Maharashtra.

...Corporate Debtor

Pronounced: 04.08.2026

CORAM:

HON'BLE SHRI ASHISH KALIA, MEMBER (JUDICIAL)

HON'BLE SHRI ANIL RAJ CHELLAN, MEMBER (TECHNICAL)

Appearances: Hybrid

Operational Creditor: Adv. Devul Dighe

Corporate Debtor: Adv. Rahul Gupta a/w. Adv. Amir Arsiwala and Adv. Shadab Peerzade i/b. Adv. Munir Merchant

ORDER

[PER: ASHISH KALIA, MEMBER (JUDICIAL)]

1. BACKGROUND

1.1 This C.P. (IB) No. 3783/MB/2019 (Application) was filed on 23.10.2019 under Section 9 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as "Code") read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 by GS Industries, the Operational Creditor (Hereinafter referred to as "Petitioner"), through Mr. Hemant Govind Chavan, Designated Partner of the Operational Creditor, authorised *vide* Authority Letter dated 07.10.2019 for initiating Corporate Insolvency Resolution Process (hereinafter referred to as "CIRP") in respect of Larsen & Toubro Limited, the Corporate Debtor (Hereinafter referred to as "Respondent/L&T").

1.2 The total amount of default alleged is Rs. 18,40,452.98/- (Eighteen Lakh Forty Thousand Four Hundred and Fifty-Two Rupees and Ninety-Eight Paise) as on 25.08.2019, which comprises the principal amount of Rs. 10,52,091.98/- along with the interest amount of Rs. 7,88,361/- calculated at the rate of 24% per annum. The alleged default amount is based on the default in payment of invoices issued by the Operational Creditor in lieu of supply of electrical panels, etc as per the Corporate Debtor's purchase orders issued during the period of May, 2018 to December, 2018.

1.3 The Operational Creditor has not provided a single date of default in the two Part-IV of the Application. However, the Operational Creditor has stated that it issued eighteen invoices regarding supply of electrical panels, etc as per the Corporate Debtor's purchase orders, with its first and last invoice dated 11.05.2018 and 27.12.2018 respectively. As per the invoices, the credit period for payment of invoices is 60 (Sixty) days and accordingly, the due date of payment of the first as well as last invoice is 12.07.2018 and 27.02.2019 respectively. Since the Corporate Debtor defaulted in payment of its outstanding dues, the Operational Creditor prays that CIRP may be initiated in respect of the Corporate Debtor under Section 9 of the Code.

2. BRIEF FACTS OF THE PETITION

2.1 It is submitted that the Applicant has supplied electrical panels, etc (hereinafter referred to as "goods") manufactured as per purchase orders raised by the Corporate Debtor and Invoices raised pursuant thereto. It is submitted that the claim of the Operational Creditor so far as all Invoices for an amount of Rs. 3,02,042/- (Rupees Three Lakhs Two Thousand and Forty-Two only). Hence, the claim of Operational Creditor to the extent of an amount of Rs. 17,50,050/- (Rupees Seven Lakhs Fifty Thousand and Fifty only) approx.

2.2 It is further stated that no controversy/dispute or contentions are raised by the Corporate Debtor. It is further submitted that each Invoice or, in any case, purchase order was a separate contract within itself. The goods were supplied as per orders placed under different purchase orders. In the month of January, 2019, the Corporate Debtor has returned the electrical panel which was required for modification.

2.3 It is further submitted that the Corporate Debtor has accepted debt due to the extent of an amount of Rs. 7,50,050/- (Rupees Seven Lakhs Fifty Thousand and Fifty only) approx. They had claimed an amount of Rs. 3,33,126/- (Rupees Three Lakhs Thirty-Three Thousand One Hundred and Twenty-Six only) (being an amount of Rs. 3,02,042/- towards Invoice Amount as well as Rs. 31,084/- being the difference between the purported quotation of Operational Creditor and next lowest bidder) towards penalty and/or damages under the Risk Purchase clause. It is further stated and submitted that after service of Demand Notice, the Corporate Debtor served its reply on 16.09.2019 *vide* email after 14 days and submitted therein that they had to procure the goods from another vendor purportedly as per the Risk Purchase Clause of the Purchase Order. The Applicant relied upon the Hon'ble NCLAT Judgment in the matter ***Ahluwalia Contractors (India) Limited vs Raheja Developers Limited***., [**Company Appeal (AT) (Insolvency) No. 703 of 2018**] under similar factual position wherein multiple invoices were raised and one invoice/bill was disputed went on to hold that work with respect to other Invoices/Bills were not disputed and since amount of undisputed debt was exceeding Rs. 1 lakh directed the Adjudicating Authority to admit the said Application. The Applicant further relied upon the Hon'ble Supreme Court Judgment in the matter of ***Union of India vs Raman Iron Foundry.,*** **[Civil Appeal No. 1330 of 1973]**.

3. BRIEF FACTS OF THE REPLY

3.1 This Tribunal issued notice to the Respondent/Corporate Debtor. The Respondent/Corporate Debtor has filed its Reply Affidavit and Written Submissions, which have been taken on record. It is submitted that this Petition is liable to be dismissed as there are pre-existing disputes between the parties, which is clear from the documents on record. It is submitted that the Electrical Systems & Equipment (hereinafter referred to as “ESE”) Business Division of the Corporate Debtor floated an e-mail inquiry on 25.09.2018 seeking quotation from 'its empanelled vendors including the Petitioner herein for supply of equipment namely Metering Panels for LTCT (low tension current transformer) of two types. The contract was awarded to the Petitioner being the lowest one and PO No. 2030216330. The PO No. 2030216330 was supplemented by further terms and conditions in terms of the agreement between the parties. During inspection, Metering Panels supplied to L&T by Petitioner were found to be defective and incompatible with the technical specifications of the PO No. 2030216330. In terms of Purchase Order No. 2030216330, the goods to be supplied by the Petitioner were to correspond with the description or the samples or the original specifications thereof, as the case may be, in full detail. The Petitioner is liable for any repairs, replacement, rectification of the defects in the goods etc. at its own cost/expenses as outlined in the PO and its terms and conditions.

3.2 It is further submitted that under the PO No. 2030216330, an invoice bearing No. 2018-19/00162 dated 19.11.2018 for an amount of Rs.3,02,042/- appearing as A-iv of Part IV of the Petition was raised by Petitioner towards the prototype supplied by them. ESE business division of L&T paid Rs.2,12,921/- to Petitioner after adjusting an amount of Rs.89,121/- against Credit Note No. GSI/18-19/001 dated 18.03.2019 for defective supplies made under PO Nos. 2034032681 & 2034032682 and Invoice Nos. 2018-19/00249 and Invoice No. 2018-19/00250 respectively, as appearing at A-viii and A-vii of Part IV of the Petition, which were issued by Petitioner to the Respondent. As the Petitioner failed to supply the rectified equipment back but had raised the invoice for the same on Respondent's ESE division for the sum of Rs.3,33,126/- (inclusive of the price charged by Petitioner and the cost incurred by ESE towards dispatch, loading, unloading, handling, insurance etc.) was recovered from Petitioner. Accordingly, Respondent issued a BDN Invoice No. 1225003145 dated 10.04.2019, which was duly enclosed with the Reply sent by the Respondent to the demand Notice of the Petitioner.

3.3 It is further submitted that the need for reconciliation is itself a pre-existing dispute which must lead to dismissal of a petition under section 9 of the Code. Moreover, mere delivery and acceptance of goods does not mean that a claim must be treated as an admitted claim and in the event of the Respondent raising a dispute on quality or quantity of goods and services even after accepting the same, it would amount to a pre-existing dispute and must lead to dismissal of the petition under section 9 of the Code. To support its contention, the Ld. Counsel for the Respondent relied upon the decisions of the Hon'ble Supreme Court in ***Sabarmati Gas Limited v. Shah Alloys Limited.,*** **[(2023) 3 Supreme Court Cases 229]** and ***Rajratan Babulal Agarwal vs. Solartex India Private Limited.,*** **[(2023) 1 Supreme Court Cases 115].**

4. ANALYSIS & FINDINGS

4.1 Heard the Learned Counsel appearing for the Parties. The short issue that arises for consideration before this Tribunal is whether the supply of goods which were allegedly not up to the mark, and in respect of which objections were raised by the Petitioner, constitutes a valid cause of action for initiation of CIRP proceedings.

4.2 As per Section 9 clause (5)(ii)(d) of the Insolvency and Bankruptcy Code, 2016, which is read as under: -

> *"d. Notice of dispute has been received by the operational creditor or there is a record of dispute in the information utility;"*

4.3 In the present case, it is an admitted position that a dispute has been raised regarding the defective panels supplied by the Applicant, and the same was duly communicated to the Applicant. It is observed that, in the Demand Notice dated 02.09.2019, it has been stated that in relation to the scope of supply under PO No. 2030216330 (S. No. 4 in the Appendix), ESE business had floated an e-mail inquiry on 25.09.2018 seeking quotation from its empanelled vendors including G.S Industries for supply of equipment namely Metering panels for LTCT (low tension current transformer) of two types. The quotation sent by G.S Industries/Petitioner on 03.10.2018 was found to be the lowest; hence the order was placed on G.S Industries on the grounds that they offered the lowest quotation of price for the scope of supply. In addition, and a supplement to the PO, G.S Industries read, understood and executed the terms and conditions applicable for Purchase Order to be placed for the scope of work as per the Purchase Order terms and Conditions (hereinafter referred to as "PO T&C"). During inspection at L&T Works, prototypes (one of each type) for both types of Metering panels that G.S Industries supplied to L&T were found to be defective and incompatible with the technical specifications of the PO no. 2030216330 issued by ESE Business Division of the Corporate Debtor.

4.4 There was a request for amendment in the existing Purchase Order by the Applicant Company on 01.01.2019. In response thereto, on 07.01.2019, the Respondent categorically communicated that the order pertaining to the Reliance CT Metering Panels Project was being cancelled and that the Purchase Order dated 24.10.2018 stood cancelled.

4.5 In view of the aforesaid facts, it is evident that a dispute has been raised by the Respondent/Corporate Debtor. Once a dispute is raised, the benefit of Section 9 of the Insolvency and Bankruptcy Code, 2016 is not available to the Operational Creditor for initiating CIRP proceedings. As held by the Hon'ble Supreme Court in the judgment relied upon by the Respondent in the matter of ***Sabarmati Gas Limited v. Shah Alloys Limited.,*** **[(2023) 3 Supreme Court Cases 229]** in Paragraph 56, which reads as under: -

"56. In the contextual situation it is only apposite to be remindful of the observation in Mobilox Innovations that in doing the act of separating the grain from chaff the Court need not to be satisfied that the defence is likely to succeed. It is enough that a dispute exists between the parties and in other words, what is to be seen is whether there was a plausible contention requiring investigation for the purpose of adjudication. Taking note of the nature-of the dispute of the respondent as referred hereinbefore in respect of the claim made b)' the appellant, we do not find any reason to disagree with the concurrent findings of the Tribunals

that there existed pre-existing dispute between the parties before the receipt of demand notice under Section 8 of IBC. In other words, the dismissal of the application under Section 9 IBC on the ground of' "pre-existing dispute" cannot be held to be patently illegal or perverse. we also do not find any reason, in the facts and circumstances, to hold that the case set up by the respondent was a patently feeble legal argument. At any rate, we are not inclined to brush aside the case of the respondent as spurious."

4.6 As per the aforesaid judgment, the Hon'ble Supreme Court relied upon the judgment in the matter of ***Rajratan Babulal Agarwal*** **(supra)** and considered the principles laid down therein, particularly in Paragraphs 58, 65, 68, 74 and 75 of the Judgment which are as follows:

*"**The decision in Mobilox***

58. After an exhaustive survey of the legislative history of IBC, and case law, this Court, speaking through R.F. Nariman, J., held, inter alia: (Mobilox case, SCC pp. 392, 394, 396, 398 & 402-403, paras 32, 34, 38. 44, 48 & 51)

> *65. This is a case where there was a contract for sale of goods. The contract as gleaned from the purchase order related to goods which were sold by description, namely, Indonesian coal. Parties clearly contemplated that the coal was to be of a certain quality, the details of which are expressly enumerated in the purchase order. The purpose for which the coal was purchased was also indicated, namely, it was to be used in a boiler. Therefore, it formed a part of the raw material for the second respondent. Pursuant to the purchase order, it is undoubtedly true, that 412MT was delivered at the factory site of the second respondent. It is beyond challenge that no part of 412 MT has*

been returned by the second respondent to the first respondent. It would be safe to proceed on the basis that the goods so delivered may have been used or consumed. It may constitute acceptance of the goods within the meaning of Section 42 of the Act.

68 We are not dealing with a suit under the Act either by the seller or the buyer. We are not oblivious to the fact that the suit has already been laid by. the second respondent seeking damages. The factum of the filing of the suit, however, cannot be taken into consideration for the purpose of deciding whether there is a pre-existing dispute under IBC. This is for the simple reason that the suit was not filed before the receipt of the demand notice under Section 8 IBC. No doubt, the documentary evidence furnished by the first respondent, namely, the purchase order indicates that the price is to be paid within seven days of receipt of the goods. It is true that Section 55(2) to the Act speaks about a contract of sale where the price is payable on a day' certain entitling the seller to sue for price. This is irrespective of the fact that the property in the goods has not passed and the goods have not been appropriated to the contract and whether delivery has been made or not. we may notice, for the purpose of the limited inquiry we can do, for deciding, whether there was a pre-existing dispute, to apply Section 55(2) a certain day must be fixed for payment of price. In this case, the payment terms speak about "within seven days of delivery".

78. As far as the contention that no debit note was raised in respect of supplied goods and that the accounts may not bear out the case of the appellant about the alleged loss, as a result of the use of the goods in question, we feel that while they may indeed have lent assurance to the case of the corporate debtor, their absence may not clinchingly rule out the existence of "pre-existing dispute" under the IBC."

4.7 Upon perusal of the aforesaid judgments, wherein the Hon'ble Supreme Court has relied upon the judgment in the matter of ***Mobilox Innovations Private Limited v. Kirusa Software Private Limited***, **[(2018) 1 SCC 353]**. In the said judgment, the Hon'ble Supreme Court had observed regarding pre-existing dispute as under: -

"51. It is clear, therefore, that once the operational creditor has filed an application, which is otherwise complete, the adjudicating authority must reject the application under Section 9(5)(i)(d) if notice of dispute has been received by the operational creditor or there is a record of dispute in the information utility. It is clear that such notice must bring to the notice of the operational creditor the "existence" of a dispute or the fact that a suit or arbitration proceeding relating to a dispute is pending between the parties. Therefore, all that the adjudicating authority is to see at this stage is whether there is a plausible contention which requires further investigation and that the "dispute" is not a patently feeble legal argument or an assertion of fact unsupported by evidence. It is important to separate the grain from the chaff and to reject a spurious defence which is mere bluster. However, in doing so, the Court does not need to be satisfied that the defence is likely to succeed. The Court does not at this stage examine the merits of the dispute except to the extent indicated above. So long as a dispute truly exists in fact and is not spurious, hypothetical or illusory, the adjudicating authority has to reject the application."

Thereafter, in ***S.S. Engineers vs. Hindustan Petroleum Corporation Limited and others.,*** **[(2022) 234 COMP CAS 95],** the Hon'ble Supreme Court noted that while examining an application under Section 9 of the Code, the Adjudicating Authority has to examine (i) whether there was an operational debt exceeding Rs. 1 Lakh (after 24.03.2020, Rs. 1 Crore); (ii) whether the evidence furnished with the application showed that the debt was due and payable and had not till then been paid; and (iii) whether there was in existence any dispute between the parties or the record of pendency of a suit or arbitration proceedings filed before the receipt of demand notice in relation to such dispute and in the event, any of the afore-stated conditions was not fulfilled, the application of the operational creditor would have to be rejected.

4.8 Further, the Hon'ble Supreme Court in ***Sabarmati Gas Limited*** (supra) considered the scope of the word 'reconciliation' and applying the definition in Black's Law Dictionary, 10th edition and opined that the apt meaning suitable to the situation in relation to accounting would mean an adjustment of amounts so that they agree, especially by allowing for outstanding items. Referring to ***Mobilox*** (supra), it also stated that it is not necessary that the Court should be satisfied that the defence of a pre-existing dispute is likely to succeed and it is enough if such a dispute exists between the parties. Recently, the Hon'ble Apex Court in ***GLS Films Industries Private Limited vs Chemical Suppliers India Private Limited.,*** **[Civil Appeal No. 4019 of 2025]** held that what is to be seen is whether there is a plausible contention requiring investigation for the purpose of adjudication for it to satisfy the requirement of a pre-existing dispute. Whether the party raising that dispute would succeed on the strength thereof is not within the ken of such inquiry.

4.9 It is further observed that where a dispute regarding the quality of goods supplied has been raised, the same is sufficient to establish the existence of a dispute between the parties. In the present case, the dispute arose prior to the filing of the Section 9 application, wherein the Petitioner/Applicant had sought amendment of the Purchase Order, which request was declined by the Respondent/Corporate Debtor. Therefore, it is an admitted position that a pre-existing dispute existed between the parties.

4.10 Learned Counsel appearing for the Applicant, at this stage, submitted that there were two separate invoices and that there was no dispute raised in respect of the second invoice; therefore, CIRP proceedings can still be initiated with respect to the said invoice. On perusal of the reply, the Respondent stated that the defects were found in the goods supplied by the Operational Creditor in both the above-mentioned invoices. Thus, there is hardly any scope to believe the statement of the Petitioner/Operational Creditor.

4.11 However, upon considering the legal position discussed hereinabove, we do not find any merit in the said contention. The judgments relied upon do not lay down that, even where a dispute has been raised by the Corporate Debtor regarding the quality of goods supplied, CIRP proceedings can be initiated in respect of other invoices.

4.12 In the present case, although separate invoices may have been raised, the fact remains that the goods supplied by the Applicant, being electrical panels, were not accepted by the Corporate Debtor on account of alleged defects.

Therefore, merely raising a plea that the invoices are different would not advance the case of the Applicant.

4.13 In view of the aforesaid discussion and the legal principles laid down by the Hon'ble Supreme Court in ***Sabarmati Gas Limited v. Shah Alloys Limited,*** **[(2023) 3 SCC 229]**, and ***Mobilox Innovations Private Limited v. Kirusa Software Private Limited,*** **[(2018) 1 SCC 353]**, we are of the considered view that there is no merit whatsoever in the present application. In view of the above, **CP(IB) No. 3783/MB/2019**, filed by GS Industries, the Operational Creditor, under Section 9 of the Code for initiating CIRP in respect of Larsen & Toubro Ltd, the Corporate Debtor is **rejected**.

4.14 However, we make it clear that any observations made in this order should not be construed as expressing an opinion on merits. The right of the Operational Creditor before any other judicial forum shall not be prejudiced on the ground of rejection of this Application.

Sd/-
ANIL RAJ CHELLAN
MEMBER (TECHNICAL)

Sd/-
ASHISH KALIA
MEMBER (JUDICIAL)

//LRA-Tanmay Jain/Supriya//