

**IN THE NATIONAL COMPANY LAW TRIBUNAL**

**NEW DELHI BENCH-IV**

**Company Petition No. (IB) 242(PB)2020**

**Under Section 9 of the Insolvency and Bankruptcy Code, 2016 read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority), Rules, 2016**

**IN THE MATTER OF:**

**MR. Debabrata Ray Choudhuri**

**.... Operational Creditor/Applicant**

**Vs.**

**The State Trading Corporation of India Limited**

**.... Corporate Debtor**

**CORAM:**

**SH. MANNI SANKARIAH SHANMUGA SUNDARAM,**

**HON'BLE MEMBER (JUDICIAL)**

**DR. SANJEEV RANJAN,**

**HON'BLE MEMBER (TECHNICAL)**

**Order Delivered on: 26.07.2024**

**PRESENT:**

**For the Applicant** : Ms. Stuti Jain,  
Mr. Akshu Jain, Advs.

**For the Respondent** : Mr. Uday Gupta, Senior Advocate  
Ms. Shivani Lal,  
Mr. Hiren Dasan,  
Ms. Sanam Singh,  
Ms. Yogamaya, M. G.,  
Mr. Rupam Gupta, Advocates

**ORDER**

**PER: MANNI SANKARIAH SHANMUGA SUNDARAM, MEMBER (J)**

1. This instant application has been preferred by MR. Debabrata Ray Choudhuri (hereinafter referred as 'Applicant'/ 'Operational Creditor'), residence at 2, Siri, Fort Road New Delhi-110049, under Section 9 of the Insolvency and Bankruptcy Code, 2016 (for brevity 'the Code') with a prayer to initiate Corporate Insolvency Resolution Process in respect of The State Trading Corporation of India Limited (hereinafter referred as 'Respondent' or 'Corporate Debtor') for defaulting the payment of outstanding amount of **Rs. 6,26,90,985/- (Rupees Six Crore Twenty Six Lakh Ninety Thousand Nine Hundred and Eight Five Only)** including a principal amount of Rs. 3,93,55,110- (Rupees Three Crore Ninety Three Lakh Fifty Five Thousand One Hundred and Ten Only) and an interest amount of Rs. 2,33,35,875/- (Rupees Two Crore Thirty-Three Lakh Thirty Five Thousand Eight Hundred and Seventy Five Only) @ 15% per annum to be paid by the Corporate Debtor.
2. The Corporate Debtor herein 'The State Trading Corporation of India Limited' having CIN: L74899DL1956GOI002674 incorporated under the provisions of the Companies Act, 2013 is having its registered office situated at Jawahar Vyapar Bhawan Tolstoy Marg, New Delhi, Delhi, India - 110001. Since the registered office of the respondent corporate debtor is in New Delhi, this Tribunal having territorial jurisdiction over the NCT of Delhi is the Adjudicating Authority in relation to the prayer for initiation

of Corporate Insolvency Resolution Process in respect of respondent corporate debtor under sub-section (1) of Section 60 of the Code.

3. **Briefly stated the facts of the present case as averred by the Applicant/ Operational Creditor are: -**

- a) The Operational Creditor provided his professional services for Rs. 4,84,70,481/- and submitted the bills for the same to the Corporate Debtor. The Corporate Debtor paid a sum of Rs. 91,15,371/- which include TDS of Rs. 11,80,109/- and paid through RTGS Rs. 79,35,262/-. Therefore, the remaining amount payable to the Operational Creditor by the Corporate Debtor comes to Rs. 3,93,55,110/.
- b) The Applicant has submitted that the Applicant/ Operational Creditor is a Designated Senior Advocate and the Corporate Debtor had approached the Applicant during the starting of 2006, when it faced significant challenges in recovering various amounts and dealing with legal disputes arising from controversial contracts.
- c) That Applicant submitted that a more than 200 bills/invoices for professional charges rendered were raised for a total amount of **Rs.3,93,55,110-(Rupees Three Crore Ninety Three Lakh Fifty Five Thousand One Hundred and Ten Only)** being the total outstanding amount due from 2009-2018.
- d) The Operational Creditor has submitted that from time to time it had raised invoices and no dispute was ever raised by the

Corporate Debtor. That vide email dated 07.02.2017 the Corporate Debtor had categorically admitted the bills submitted by the Operational Creditor and had raised issue with only 23 numbers of bills for want of Order Sheets of the cases.

- e) Additionally, it has been stated that the operational creditor, a Senior Advocate, regularly appeared alongwith a briefing advocate. Despite the briefing advocate's bills being settled, the operational creditor's invoices remained unpaid.
- f) The Applicant has submitted that the Corporate Debtor questioned bills submitted by the Operational Creditor via email dated 07.02.2017, specifically requesting order sheets for certain bills raised by Applicant. It has been submitted by the Applicant that even after deduction for payments done and bills lacking order sheets, the admitted outstanding amount due to the Operational Creditor stands over and above the threshold limit as envisaged in the Code and therefore application liable to be admitted.
- g) The Applicant has submitted that the demand notice under section 8 IBC was issued on 26.07.2019 and the application under section 9 of the IBC Code was filed on 16.12.2019. Therefore, the pecuniary limit under section 4 of the Code applicable to the present case is rupees one lakhs.
- h) The Applicant has submitted that there has been There was never any dispute as to the amount of the bills but the Corporate Debtor just kept on assuring to make the payments but left the

Operational Creditor hanging on the pretext of Court Orders/ Arbitral Tribunal Orders, which were already in their possession.

**4. Submissions of the Ld. Counsel appearing for the Respondent/Corporate Debtor are:**

- a) Respondent/Corporate Debtor appeared through its counsel and filed reply denying various averments made in the Application. that the present application filed by the Operational Creditor is false, frivolous and vexatious and the same is nothing but an abuse and misuse of the process of law and has been filed without any cause of action in favour of the Operational Creditor and against the Corporate Debtor. Hence, the present application is not maintainable and is liable to be dismissed with heavy cost.
- b) The Respondent submitted that Corporate Debtor herein 'State Trading Corporation of India Ltd. (STC)', is a premier international trading company of the Government of India engaged primarily in exports and imports operations. The Corporate Debtor is registered as an autonomous company under the Companies Act, 1956 and functions under the administrative control of the Ministry of Commerce & Industry, Government of India. Amongst various other functions, the Corporate Debtor does price support operations to ensure remunerative prices to growers for their crops such as raw jute, shellac, tobacco, rubber and vanilla.
- c) The Respondent submitted that the Corporate Debtor is an instrument of the Central Government and carries out the

autonomous function and hence, the Insolvency Code cannot be used against such a governmental body, because no resolution professional or private individual can take over the management of such body, as it performs autonomous functions, nor can such body be driven to insolvency under an Insolvency Code. To substantiate its contention it has relied upon the judgment passed by Hon'ble Supreme Court of India **in M/s Hindustan Construction Company vs. Union of India (W.P., No. 1074/2019)** wherein it was held that NHAI being a government undertaking and a sovereign body cannot be pushed into insolvency. The relevant extract as relied by Corporate Debtor are produced here-below

*"NHAI is a statutory body which functions as an extended limb of the Central Government, and performs governmental functions which obviously cannot be taken over by a resolution professional under the Insolvency Code, or by any other corporate body. Nor can such Authority ultimately be wound-up under the Insolvency Code."*

- d) The Corporate Debtor has submitted that the present petition is also barred by the law of limitation as the Applicant is claiming alleged outstanding dues starting from the year 2008 onwards i.e. as long back as 12 years, whereas the law laid by the Hon 'ble Apex Court is very clear in the Judgment of **B.K. Educational Services Private Limited vs. Parag Gupta and Associates**, cited at **AIR 2018 SC 5601**, wherein the limitation period of three

years has been prescribed for initiating any action under the Code. Therefore, the alleged claim of the Applicant is also barred by law of limitation.

- e) The Respondent/ Corporate Debtor has submitted that the Applicant cannot take plea that their professional fees constituted a running account. Senior Advocates, such as the Applicant, are typically briefed only for crucial hearings, not all proceedings before the Court/Tribunal. Moreover, not all matters involving the Corporate Debtor required the Applicant's engagement. Therefore, each appearance by the Applicant was a separate transaction, not connected to others, precluding any claim that outstanding dues form part of a running account.
- f) Further it has been submitted that the Applicant has conveniently omitted to disclose the first Demand Notice dated 08.01.2019 sent to the Respondent, which elicited a detailed response dated 18.01.2019 raising substantial disputes against the Applicant's unfounded claim. While the Applicant mentioned retracting the initial Demand Notice due to calculation errors in the synopsis, they failed to acknowledge or address the defenses articulated by the Respondent in their reply to the first legal notice
- g) The Applicant had failed to disclose crucial facts and documents from this Adjudicating Authority with a clear intention to obfuscate the existence of numerous disputes between themselves and the Respondent. This deliberate act aims to

prevent the proper consideration of whether CIRP under section 9 of the Code can be initiated. According to the well-established legal precedent set by the **Hon'ble Supreme Court in Mobilox Innovations Private Limited v. Kirusa Software Private Limited**, the initiation of CIRP is not permissible if there are unresolved disputes regarding the alleged debt.

- h) Furthermore, the Applicant has failed to provide a satisfactory explanation for continuing to represent the Corporate Debtor until 2018, despite their professional fees allegedly remaining unpaid since 2006. As an advocate, the Applicant has not clarified why no legal action was pursued to recover the dues outstanding since 2008. Moreover, they have not justified the significant delay in approaching this Adjudicating Authority after twelve years of purported outstanding fees. These omissions and failures to explain raise serious questions about the Applicant's conduct and the basis for their claims under the IBC.
- i) It has been further submitted that the Applicant, Senior Advocate regularly engaged by the Corporate Debtor, was provided with a separate Fee Schedule that outlined higher professional fees compared to standard schedules for other Senior Advocates. This specialized Fee Schedule was issued at the Applicant's written request due to their handling of critical matters for the Corporate Debtor. It was periodically revised by the Corporate Debtor to reflect ongoing engagements and responsibilities. The

Respondent has annexed copies of Fee Schedule dated 11.08.2006, 05.06.2008, 17.09.2010, and 20.09.2010.

- j) The Applicant has failed to disclose the Fee Schedules as evidenced by invoices submitted without adherence to the agreed Fee Schedules. This deliberate omission warrants dismissal of the application and suggests the Applicant's ulterior motive of pressuring the Corporate Debtor into meeting unjust demands, under threat of insolvency. The Fee Schedules, approved by the Corporate Debtor's Competent Authority at the Applicant's request, were consistently followed without objection from the Applicant, and the Corporate Debtor has submitted that it had never assured payment beyond these rates.
- k) The Corporate Debtor in its reply has submitted that numerous invoices attached to the application exhibit significant discrepancies: some lack signatures or bear clerks signatures instead of advocates, while others predate the Operational Creditor's court appearances. Additionally, several invoices omit crucial details such as case names or refer to unrelated case numbers. The Applicant was informed of disputes regarding these invoices, yet failed to address or resubmit them for processing. This deliberate omission aimed to securing a favorable decision under Section 9 of the IBC. Further, the Corporate Debtor has questioned the authenticity of Ledger annexed with the application due to various discrepancies.

5. **Submissions of the Ld. Counsel appearing for the Operational Creditor in the Rejoinder are:**

- a) The Applicant has stated that the assertion that the Corporate Debtor beings registered as an "Autonomous Company" is false and unsubstantiated. The Corporate Debtor is governed by a Board of Directors, which includes government-appointed directors. The CMD directors are appointed solely by the Government of India, not by the Board.
- b) Further the Applicant has countered that the case of Hindustan Construction Company has no application in the present case. "NHAI is a statutory body and it is not coming under the preview of Companies Act, but Corporate Debtor is incorporated under the Companies Act.
- c) Further it has been denied that any amount beyond the approved schedule was charged while the schedule was valid. However, it was discovered that even the approved schedule by the STC management was not honoured consistently. Payments were arbitrarily reduced without justification, and many bills were neglected and left unpaid. Despite requests for payment details, information was withheld to suppress facts.

**ANALYSIS AND FINDINGS**

6. We have heard the Ld. Counsel on behalf of the Applicant/Operational Creditor and further perused the averments made in the application, reply filed by the Corporate Debtor, Rejoinder by the Applicant, Additional Affidavits and written submission presented by Operational Creditor and

Corporate Debtor. Since, the registered office of the Respondent/ Corporate Debtor is in Delhi, this Adjudicating Authority is having territorial jurisdiction as the Adjudicating Authority in relation to prayer for initiation of Corporate Insolvency Resolution Process (CIRP) under Section 9 of the Insolvency and Bankruptcy Code, 2016, against the Corporate Debtor. Further, the present petition is filed within the period of limitation.

7. On perusal of the Case file, it is observed that the Operational Creditor has sent the first demand notice dated 08.01.2019 to the Corporate Debtor under Section 8 of the Insolvency and Bankruptcy Code, 2016 demanding payment of outstanding dues worth Rs. 6,48,17,455/- and its reply was furnished by Corporate Debtor dated 18.01.2019. The First demand notice was recalled due to calculation mistake. Thereafter another demand notice dated was issued by the Applicant dated 26.07.2019 to the Corporate Debtor under Section 8 of the Insolvency and Bankruptcy Code, 2016 demanding payment of outstanding dues worth Rs. 6,26,90,985.02/- (Rupees Six Crore Twenty-Six Lakh Ninety Thousand Nine Hundred and Eighty-Five Only) which included principal amount of Rs. 3,93,55,110 (Rupees Three Crore Ninety-Three Lakh Fifty-Five Thousand One Hundred and Ten Only) and an interest amount of Rs. Rs. 2,33,35,875.02/- (Rupees Two Crore Thirty-Three Lakh Thirty-Five Thousand Eight Hundred and Seventy Five Only) @ 15% per annum.
8. On a perusal of Part-IV of Form 5 giving particulars of the operational debt claimed by the applicant in the instant we notice that the applicant has claimed **Rs. 6,26,90,985/- (Rupees Six Crore Twenty Six Lakh Ninety**

**Thousand Nine Hundred and Eight Five Only)** including a principal amount of **Rs. 3,93,55,110- (Rupees Three Crore Ninety Three Lakh Fifty Five Thousand One Hundred and Ten Only)** and an interest amount of **Rs. 2,33,35,875/-(Rupees Two Crore Thirty Three Lakh Thirty Five Thousand Eight Hundred and Seventy Five Only) @ 15%** per annum to be paid by the Corporate Debtor.

9. For admission of the Section 9 application, one of the principal requirements is that there should not be any pre-existing dispute between the Operational Creditor and the Corporate Debtor before issue of the Section 8(1) notice.

10. The **Hon’ble Supreme Court in Mobilox Innovations Private Limited vs. Kirusa Software Private Limited (Civil Appeal No. 9405 Of 2017)** passed on 21.09.2017 has held:

“We have also seen that one of the objects of the Code qua operational debts is to ensure that the amount of such debts, which is usually smaller than that of financial debts, does not enable operational creditors to put the corporate debtor into the insolvency resolution process prematurely or initiate the process for extraneous considerations. It is for this reason that it is enough that a dispute exists between the parties.”

.....

Therefore, all that the adjudicating authority is to see at this stage is whether there is a plausible contention which requires further investigation and that the “dispute” is not a patently feeble legal argument or an assertion of fact unsupported by evidence. It is

important to separate the grain from the chaff and to reject a spurious defence, which is mere bluster. However, in doing so, the Court does not need to be satisfied that the defence is likely to succeed. The Court does not at this stage examine the merits of the dispute except to the extent indicated above. So long as a dispute truly exists in fact and is not spurious, hypothetical or illusory, the adjudicating authority has to reject the application.”

11. The abovementioned judgment has again been reiterated by the **Hon’ble Supreme Court** in its judgement delivered on January 04, 2023 in the matter of **Sabarmati Gas Limited vs. Shah Alloys Limited (Civil Appeal No. 1669 of 2020)** has held:

“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 by the appellant, we do not find any reason to disagree with the concurrent findings of the Tribunals that there existed a ‘pre-existing dispute’ between the parties before the receipt of demand notice under Section 8, 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. We may hasten to add here that we shall not be understood to have held that the dispute set by the respondent regarding the dues is ultimately to be upheld. Certainly, when the expression 'pre-existing dispute' is used it will only indicate the existence of a dispute prior to the receipt of a demand notice under Section 8, IBC, and the correctness or its truthfulness is a matter of evidence. In short, the respondent has succeeded in raising a dispute describable as 'pre-existing dispute'. In that view of the matter once we find that the Tribunals have rightfully held that there existed a 'pre-existing dispute' between the parties there cannot be an order of remand of the matter to the Tribunal for reconsideration of Section 9 application under IBC."

12. Upon consideration of the facts in the present case, it is evident that there are certain disputes/conflicts vis-à-vis the alleged outstanding amount sought by the applicant herein prior to the issuance of the statutory demand notice and the institution of the present application pertaining to invoices issued by the Applicant/ Operational Creditor.
13. There exists a pre-existing dispute regarding the invoices issued, as they do not conform to the agreed schedule of fees. The invoices in question have discrepancies that have not been rectified despite previous communications highlighting these issues. This discrepancy underscores the existence of a substantial dispute between the parties concerning the legitimacy of the invoiced amounts. Therefore, it is evident that a pre-

existing dispute exists concerning the invoices issued and their alignment with the agreed schedule of fees.

14. The Applicant has alleged non-payment of fees by Corporate Debtor dating back to 2007, despite continuing to represent Corporate Debtor in various legal forums until 2018. It is a fact that the Applicant did not raise any grievance regarding unpaid bills over the past decade. Further as per the submission of the Respondent the issue pertaining to recovery of dues was raised only after Corporate Debtor ceased engaging the Applicant's legal services in the third quarter of 2018 that these alleged demands were suddenly raised.
15. Furthermore, the Applicant's role as a Senior Advocate inherently involves diligent oversight, and it seems implausible that a company as substantial as STC would allow significant dues to remain outstanding for such an extended period while consistently engaging the Applicant in crucial legal matters, also making it highly unlikely that such significant dues would remain unaddressed for so long without prior notice. This sequence of events appears irregular and certainly raises cogent questions pertaining to authenticity of the Invoices raised. The issue pertaining to want of additional documents supporting the Invoice was questioned in one of the emails sent by Corporate Debtor to Applicant vide email dated 07.02.2017. Further it was submitted that vide email dated 19.10.2016 the issue for pertaining to discrepancy pertaining to bills was issued and vide email dated 22.12.2016 the issuance of bill raised twice was raised before the Applicant by the Corporate Debtor. Certainly, these facts and circumstances as averred by the Respondent indicate that there existed

pre-existing dispute between the parties. Further examination of the bill reveals a notable statement " The Senior Counsel's next appearance will depend on settlement of the bill." It is surprising that despite such clear terms, these bills remained unsettled without any demand being raised over such a prolonged period.

16. In the light of the positions thus settled in Mobilox Innovations (P) Ltd. (supra) and Sabarmati Gas Limited, we have examined the question whether there was a 'pre-existing dispute' between the parties, warranting dismissal of the application for initiation of CIRP filed by the Applicant. Keeping in mind the judgement passed in **Mobilox Innovations Private Limited vs. Kirusa Software Private Limited**, we are of the opinion that the pre-existing disputes in the instant case are not mere feeble arguments. There appears that the disputes truly exist and is not the hypothetical.
17. In the light of the above findings, we are of the considered view that the petitioner has not made out a case for initiation of CIRP under Section 9 of the Insolvency and Bankruptcy Code, 2016, therefore, present Section 9 petition is dismissed, however without cost.

**Sd/-**

**(DR. SANJEEV RANJAN)**  
**MEMBER (T)**

**Sd/-**

**(MANNI SANKARIAH SHANMUGA SUNDARAM)**  
**MEMBER (J)**