NATIONAL COMPANY LAW APPELLATE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

Company Appeal (AT) (Insolvency) No. 583 of 2024

[Arising out of the Impugned Order dated 19.12.2023 passed by the Adjudicating Authority, National Company Law Tribunal, Mumbai Bench-I in C.P. (IB) No. 137/MB/C-I/2023]

In the matter of:

SURENDRA SANCHETI (SHAREHOLDER OF ALTIUS DIGITAL PRIVATE LIMITED)
Residing at A-602, Blue Bell Apartment,
Devi Dayal Road, B P S Plaza,
Mulund, Mumbai- 400080

...Appellant

Versus

1. **GOSPELL DIGITAL TECHNOLOGIES CO. LIMITED**
   Gospel Industrial Park,
   Guanshandong Steet,
   Chenzhou City, Suxian District,
   Hunan, China- 423000
   Email: haojg@gospell.com

...Respondent No.1

2. **Dushyant Dave**
   Interim Resolution Professional,
   Altius Digital Private Limited
   102, 1st Floor, Building No. A-5,
   Babosa Industrial Park,
   Saravali Village,
   Nashik- Mumbai Highway,
   Bhiwandi, Thane,
   Maharashtra- 421302
   Email: cirp.altius@decoderesolvency.com

...Respondent No.2

Present :

For Appellant : Mr. Sunil Fernandes, Sr. Advocate with Mr. Milan Singh Negi, Mr. Ashish Pyasi, Mr. Nikhil Kumar Jha, Ms. Rajshree Choudhary and Ms. Akriti Gupta, Advocates.

For Respondent : Mr. Sandeep Bajaj, Mr. Sharath Sampath, Mr. Mayank Biyani and Ms. Kavya Singh, Advocates.

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

Per: Barun Mitra, Member (Technical)

The present appeal filed under Section 61 of Insolvency and Bankruptcy Code 2016 ('**IBC**' in short) by the Appellant arises out of the Order dated 19.12.2023 (hereinafter referred to as '**Impugned Order**') passed by the Adjudicating Authority (National Company Law Tribunal, Mumbai Bench-I) in C.P. (IB) No. 137/MB/C-I/2023. By the impugned order, the Adjudicating Authority has admitted the Section 9 petition against the Corporate Debtor and ordered initiation of Corporate Insolvency Resolution Process (**"CIRP"** in short) of the Corporate Debtor. Aggrieved by the impugned order, the present appeal has been preferred by the shareholder of the Corporate Debtor.

2. Coming to the brief facts of the case, the Operational Creditor had a business relationship with the Corporate Debtor and supplied Set Top Boxes (**"STB"** in short) on credit to the Corporate Debtor. Since the payments were not forthcoming from the Corporate Debtor and allegedly the latter continued to remain in default, the Operational Creditor sent a Legal Notice dated 07.07.2022. Despite the Legal Notice, the Corporate Debtor failed to make payment of the pending amount to the Operational Creditor. The Legal Notice was followed by reminders until filing of statutory demand notice under Section 8 of the IBC on 18.11.2022 demanding an amount of USD 121,47,968 towards principal amount. A notice of dispute to the Demand Notice was issued by the Corporate Debtor to the Operational Creditor on 01.12.2022

disputing the entire operational debt. The Operational Creditor proceeded to file the Section 9 application on 14.12.2022 claiming an amount of USD 129,07,968 towards principal amount. The date of default in the Part-IV of Form 5 was 10.03.2020. The Adjudicating Authority has by the impugned order admitted the Section 9 petition against the Corporate Debtor and ordered initiation of CIRP of the Corporate Debtor. Aggrieved by the impugned order, the present appeal has been preferred by the Appellant.

3. We have heard Shri Sunil Fernandes, Ld. Sr. Advocate appearing for the Appellant while Shri Sandeep Bajaj, Ld. Advocate represented the Respondent.

4. Making his submissions, the Ld. Sr. Counsel for the Appellant submitted that the impugned order has been predicated on the sole ground that the Appellant-Corporate Debtor had acknowledged dues to the tune of USD 88,81,595 in an email dated 03.03.2021. It was contended that the Adjudicating Authority had failed to notice that in the same email, the Appellant had disputed the dues to the tune of USD 58,25,889. Furthermore, two other emails were issued by the Corporate Debtor on 02.06.2021 and 03.06.2021 in which multiple disputes were raised ranging from grounds of poor quality of goods supplied, reconciliation of accounts, recovery from debtor, settlement of debt notes etc. These emails had also been acknowledged by the Operational Creditor and having been issued prior to the statutory demand notice under Section 8 of IBC, it signified pre-existing disputes which were wrongly overlooked by the Adjudicating Authority. The Ld. Sr. Counsel

for the Appellant submitted that the Adjudicating Authority had wrongly bifurcated the operational debt into disputed operational debt and undisputed operational debt and admitted the Corporate Debtor into CIRP on the ground that the undisputed debt was above the threshold limit. Another contention raised by the Appellant is that their business relationship with the Operational Creditor was governed by an agreement dated 21.06.2015 and not by the agreement claimed by the Operational Creditor. Submission was pressed that the Adjudicating Authority had ignored the fact that the existence of this agreement dated 21.06.2015 is adequately substantiated as these find mention in the emails dated 02.06.2021 and 03.06.2021 sent by the Appellant to the Operational Creditor. Denial by the Operational Creditor of the agreement dated 21.06.2015 by itself constituted a dispute and thus was a sufficient ground for rejection of the Section 9 application. It was therefore incumbent upon the Adjudicating Authority to take cognisance of these pre-existing disputes which has however erroneously not been done.

5. Refuting the submissions made by the Appellant, the Ld. Counsel for the Respondent submitted that the Operational Creditor had always made delivery of goods to the Corporate Debtor within the time period agreed by the parties on the basis of purchase orders issued by the Corporate Debtor. The Corporate Debtor had been accepting delivery of the STBs without raising any demur or protest but made only partial payments to the Operational Creditor for the goods supplied because of which Operational Creditor issued reminders for payment to the Corporate Debtor. The Corporate Debtor had

confirmed that as per its books a sum of USD 88,81,595 was due and payable to the Operational Creditor. Despite making clear admission of their liability towards Operational Creditor, the Corporate Debtor did not pay the entire amount which was due and payable to the Operational Creditor and this amount outstanding being more than the threshold of Rs 1 Cr, debt and default was established. It was also vehemently contended that the material on record does not in any way support the case of the Corporate Debtor that the business understanding between the two parties was determined by the agreement dated 21.07.2015 and that this was a spurious defence unsupported by evidence. The Respondent has relied on the judgment of this Tribunal in ***Naresh Choudhary Vs Sterling Enameled Wires Pvt. Ltd. in CA(AT)(Ins.) No. 39 of 2023*** wherein it was held that if at the time of acknowledging the outstanding operational debt, the subsistence of any pre-existing dispute lacked foundation, then it is a fit case for admission of Section 9. The Respondent also relied upon the judgement of this Tribunal in ***Nandamuri Meenalatha Vs Mis. Quality Steels and Wire products and Anr. CA(AT)(Ins.) No. 11 of 2023*** wherein it had been held that if debt confirmation was made by the Corporate Debtor and part payment was made after that by the Corporate Debtor under invoices submitted by the Operational Creditor, it tantamount to valid and proper admission of debt and default in the eyes of law. Attention was also drawn to the judgements of this Tribunal in ***Pankaj Agarwal Vs H.V.R. Industries Pvt. Ltd. & Anr.*** in ***CA(AT)(Ins.) No. 482 of 2022*** and ***Ashish Sudeshkumar Goyal, Suspended Director of Superchem Coatings Pvt. Ltd. Vs Padam Electronics & Anr.***

in ***CA(AT)(Ins) No. 86 of 2022*** that when part of the debt is admitted by the Corporate Debtor and if such admitted debt is above the threshold, then no error is committed by the Adjudicating Authority in admitting the application for initiating CIRP. Hence, following the above ratios, in the present case, there was no infirmity in the impugned order passed by the Adjudicating Authority admitting the Section 9 application.

6. We have duly considered the detailed arguments and submissions advanced by the Learned Counsel for both the parties and perused the records carefully.

7. The short point for our consideration is whether payment to the Operational Creditor was due from the Corporate Debtor giving rise to an operational debt, and if so, whether a default has been committed by the Corporate Debtor in respect of payment of such operational debt having already become due and payable and whether the said operational debt exceeds the threshold level and is an undisputed debt.

8. This examination would be in line with the test which has been laid down by the Hon'ble Supreme Court in ***Mobilox Innovations Pvt. Ltd. Vs. Kirusa Software Private Limited (2018) 1 SCC 353*** for the Adjudicating Authority while examining an application under Section 9, the relevant excerpts of which are as follows:-

> *"34. Therefore, the adjudicating authority, when examining an application under Section 9 of the Act will have to determine:*
> *(i) Whether there is an "operational debt" as defined exceeding Rs. 1 lakh? (See Section 4 of the Act)*

(ii) Whether the documentary evidence furnished with the application shows that the aforesaid debt is due and payable and has not yet been paid? and
(iii) Whether there is existence of a dispute between the parties or the record of the pendency of a suit or arbitration proceeding filed before the receipt of the demand notice of the unpaid operational debt in relation to such dispute?

If any of the aforesaid conditions is lacking, the application would have to be rejected. Apart from the above, the adjudicating authority must follow the mandate of Section 9, as outlined above, and in particular the mandate of Section 9(5) of the Act, and admit or reject the application, as the case may be, depending upon the factors mentioned in Section 9(5) of the Act."

9. Let us now see whether the first two tests laid down by ***Mobilox judgment supra*** of operational debt exceeding the threshold level having become due and payable but not yet paid is applicable in the present case.

10. The Operational Creditor has placed material on record which shows that in response to their email dated 17.12.2020 as placed at page 929 of Appeal Paper Book (**'APB'** in short), the Corporate Debtor in their reply email dated 21.12.2020 as placed at page 927 of Appeal Paper Book (**'APB'** in short) clearly admitted that they had made total imports of about USD 70 million during the period from 2016 to November 2020 against which they had paid only USD 57 million to the Operational Creditor. It was however contended by the Corporate Debtor that the Adjudicating Authority had not taken cognisance of the fact that the alleged balance confirmation dated 03.03.2021 was issued on the insistence of the Operational Creditor with the limited purpose of disclosure.

11. It is equally pertinent to note that the same email of 21.12.2020 further explains the financial difficulties faced by the Corporate Debtor which led to the outstanding dues which remained unpaid which is as reproduced below:-

> *"Due to Covid 19 situation lot of disruption has happened in the Business lot of business cash flow has been badly impacted. Some of the business faced disruptions, we are trying to collect the funds as soon as possible so we can send the same to Gospell and reduce the outstanding."*

12. The contents of the above email make it amply clear that the Corporate Debtor had admitted the operational debt and held adverse cash-flow to be the cause for non-payment of the operational debt and as such no dispute with the Operational Creditor was attributed for non-payment of the same. That there was no dispute between the Operational Creditor and Corporate Debtor at this stage when debt was acknowledged by the Corporate Debtor can also be inferred from the fact that the Corporate Debtor stated in the same debt-acknowledgement email that they are proud of opening up India market for the Operational Creditor and to play their part in building the growth strategies of the Operational Creditor in the Indian market. The tone and tenor of the email clearly shows that that the Corporate Debtor while admitting the debt had shown their commitment to participate with the Operational Creditor in building their brand presence in India thereby showing that there was no dispute between the parties on the business dealings.

13. Submission has also been pressed by the Operational Creditor that even thereafter their auditor had addressed an email to the Corporate Debtor on

25.02.2021 seeking balance confirmation of account of Corporate Debtor with the Operational Creditor which is placed at page 860 of APB. We have looked at the balance confirmation which was signed and stamped by the Corporate Debtor and sent to the Operational Creditor on 03.03.2021 as placed at page 859 of APB. The balance confirmation document at page 862 shows that the Operational Creditor had sought balance confirmation of USD 147 million from the Corporate Debtor. Even at this stage, the Corporate Debtor unequivocally admitted owing an amount of USD 8.8 million to the Operational Creditor as on 31.12.2020. There is no doubt that a differential amount of USD 5.8 million was pointed out in the signed and stamped confirmation but on perusing the document, we are unable to read any signs of outright refusal or denial on their part to pay their admitted amount of debt of USD 8.8 million in the email of 03.03.2021. In any case, we cannot entertain any doubt in our minds that Corporate Debtor had admitted a debt of USD 8.8 million qua the Operational Creditor which amount stood clearly above the threshold level.

14. It is the case of the Corporate Debtor that in their subsequent emails of 02.06.2021 and 03.06.2021, they had disputed the outstanding debt. Though these emails were issued subsequent to the balance confirmation sent on 03.03.2021, nevertheless, these emails were issued prior to the statutory demand notice under Section 8 of IBC. However, when we peruse the email of 03.06.2021carefully which is placed at pages 961-963 of APB, we notice that even in this email, the admission of debt and default as on 21.12.2020 was

again acknowledged by the Corporate Debtor wherein the Corporate Debtor has acknowledged that "*approximate outstanding as per our books is USD 7-8 million, we will share the detail break-up again.*" In the same email, the Corporate Debtor has also indicated that certain debit notes were required to be settled but even at this juncture they did not deny the existing outstanding amount to be repaid. In addition, it was once again reiterated that due to Covid-19, their cash flows had been impacted. It has also been indicated that once the account is settled, they would clear the account as per original mutual agreement and discuss for new business. Nowhere, in the communication have they denied the fact that they owed the debt to the Operational Creditor. The aforementioned repeated admissions by the Corporate Debtor amounts to be a clear acknowledgment of debt being due and payable. The contention of the Corporate Debtor that only part of the debt has been admitted by the Corporate Debtor does not hold ground as long as the admitted debt which has been admitted is clearly above the prescribed threshold limit of Rs 1 cr. The Corporate Debtor has duly admitted the outstanding debt and default which is a valid and proper admission in the eyes of law. In the attendant facts and circumstances, no error was committed by the Adjudicating Authority in admitting the application for initiating CIRP.

15. This now brings us to the third test as laid down by ***Mobilox judgement*** as to whether there is existence of dispute between the parties.

16. Material placed on record show that while the Corporate Debtor had admitted their liability a number of times but payments were not forthcoming from them, the Operational Creditor had sent a Legal Notice dated 07.07.2022. Despite this notice, the Corporate Debtor failed to make payment of the pending amount to the Operational Creditor. The Legal Notice was followed by filing of statutory demand notice under Section 8 of the IBC on 18.11.2022. It is at this stage that a notice of dispute was issued by the Corporate Debtor to the Operational Creditor on 01.12.2022 disputing the entire operational debt.

17. It is the case of the Corporate Debtor that in their Notice of Dispute as placed at page 876 of the APB, it was clearly stated by them that the said demand notice did not disclose the existence of agreement dated 21.06.2015 which had been executed between the Corporate Debtor and the Operational Creditor which agreement laid down the original understanding of the contractual relationship between the parties. The Ld. Sr.Counsel for the Appellant submitted that the Appellant by way of an affidavit had brought on record before the Adjudicating Authority the agreement dated 21.06.2015. It was also stated that the notice of dispute also highlighted that the Operational Creditor had inter-alia failed to address a host of other disputes raised by the Corporate Debtor from time to time.

18. We would like to first deal with the issue of the agreement dated 21.06.2015 which has been projected by the Corporate Debtor as a bone of contention between the parties since this original agreement has been denied

and disowned by the Operational Creditor. It has been contended by the Corporate Debtor that in terms of this agreement as placed at page 914 of the APB, the Corporate Debtor was to receive handling charges at the rate of per STB Rs 50 and 4% of sales volume. The sales were to be conducted by the Corporate Debtor to customers identified by the Operational Creditor and at prices decided by the Operational Creditor. The recovery of the outstanding amount was to be undertaken by the Operational Creditor which also undertook to bear all losses, damages, penalties etc. incurred during the transaction with the Corporate Debtor. However, the Adjudicating Authority had simply side-stepped the existence of this agreement dated 21.06.2015 and did not give its findings on the denial by the Operational Creditor of the agreement dated 21.06.2015 which constituted a pre-existing dispute and was sufficient ground for rejection of the Section 9 application.

19. Per contra, it is the contention of the Operational Creditor that the Corporate Debtor in its affidavit in reply to the Section 9 petition on 14.09.2023 had adverted attention to a copy of an agreement dated 21.07.2015 for the first time and not in their reply to Section 8 demand notice. The Operational Creditor vehemently denied and disputed the existence of any such agreement of 21.07.2015 and stated by way of an affidavit before the Adjudicating Authority that this agreement was a forged and fabricated document created to prejudice the mind of the Adjudicating Authority. Submitting that no mention was ever made of this alleged agreement prior to filing of the reply to Section 9 application, the Operational Creditor was

constrained to file an additional affidavit denying the existence of the alleged agreement as placed at page 1081 of APB. It was also pressed that the alleged agreement dated 21.07.2015 was not executed by any person authorised by the Operational Creditor. It has also been stated in the affidavit that the 21.07.2015 agreement was not made/executed on the letterhead of the Operational Creditor which is the standard business practice of the Operational Creditor. Hence it was contended that this was a frivolous contention raised as an afterthought and deserved to be disregarded.

20. From the material placed before us, we find that this alleged agreement was never specifically mentioned by the Corporate Debtor at any point of time prior to filing the reply to the Section 9 application. No specific disputes as to which agreement governed their contractual relationship was raised prior to the issuance of statutory demand notice on under Section 8 of the IBC by either parties. More importantly, we find from the records that the Corporate Debtor adopted contradictory and shifting stand on the agreement governing their business relationship. This becomes clear when we look at the notice of dispute dated 01.12.2022 wherein the Corporate Debtor has claimed that the business relationship with the Operational Creditor was guided by an agreement dated 04.10.2016 and there is no mention of the agreement of 21.07.2015. It may be useful to extract the relevant portions of the Notice of Dispute which reads as follows:

> "*4. We say that your client has not set out the true and correct facts of the matter. The relevant facts relating to the case are briefly stated as follows:*

i. There was an arrangement between ADPL and your client for appointing ADPL as its exclusive distributor to purchase goods and resell and services in India for a particular period. The arrangement was recorded in the agreement dated 4th October 2016. Further, there was subsequent Agreement dated 01st September 2018 which was entered between the said parties from time to time to extend the tenure in the agreement."

(Emphasis supplied)

21. We notice from the above reply that even at the stage of notice of dispute, the Corporate Debtor has only mentioned about some agreement of 04.10.2016 and subsequent agreement of 01.09.2018 while there is no mention of the agreement of 21.07.2015. It is therefore a misleading statement made by the Corporate Debtor that the agreement of 21.07.2015 finds mention in the Notice of Dispute. Furthermore, if this constituted the principal ground of dispute, as has been contended by the Corporate Debtor before the Adjudicating Authority, it was expected of them to have adverted the particular attention of the Operational Creditor to this agreement and for their not acting in compliance with this agreement. No supporting documents are available on record to show exchange of any sustained correspondence with the Operational Creditor regarding the principal agreement or subsequent agreements which determined their contractual relationship prior to issue of demand notice. In the absence of any such previous references to the agreement of 2015, we, therefore, find credence in the argument of the Operational Creditor that this agreement of 21.07.2015 was brought to the fore on 14.09.2023 for the first time when the Corporate Debtor filed its reply

to the Section 9 application purely as an after-thought with the sole purpose of avoiding their liability to pay the outstanding amount.

22. This brings us to yet another contention of the Appellant that the Operational Creditor on multiple occasions supplied inferior quality of goods. This issue was flagged and brought to the notice of the Operational Creditor on several occasions by the Corporate Debtor. It was also contended that the Operational Creditor had admitted the quality disputes qua the goods supplied during the period 2017-2020 and that debit notes were issued from time to time which therefore evidences pre-existing disputes. Though the Corporate Debtor on 03.03.2021 had signed the confirmation for receivable and repayable balances amounting USD 88,81,595, it was simultaneously brought to the notice of the Operational Creditor that some amount was due to the Corporate Debtor from the Operational Creditor because of defective goods. Thus, there was need of account adjustment between the parties and their emails dated 02.06.2021 and 03.06.2021 specifically pointed out account reconciliation issues between the parties. It was also vociferously contended that the outstanding amount was disputed since the Corporate Debtor had sent an email on 29.01.2021 to the Operational Creditor informing them that they had reflected a debit note of USD 4.5 million in their audited books of accounts for F.Y. 2019-20. The Adjudicating Authority had clearly failed to look into the issue of reconciliation of accounts which were subsisting and pending adjustments required to be made between the Operational Creditor and the Corporate Debtor. It was asserted that in a Section 9 application, as

soon as the Adjudicating Authority comes across any dispute between the parties, it is required to reject the Section 9 application without further investigation. In the present case, the Adjudicating Authority went ahead to ignore the disputes between the parties while admitting the Section 9 application.

23. It is the counter contention of the Operational Creditor that purchase orders were placed by the Corporate Debtor in the ordinary course of business on them as placed at pages 103 to 110 of APB. The Operational Creditor had supplied the goods as per specifications required by the Corporate Debtor following which the Operational Creditor had raised invoices. It was asserted that the very fact that the Corporate Debtor had been placing purchase orders upon Operational Creditor since 2015 and the Operational Creditor had been making delivery of all goods within the time period, which delivery of goods have been accepted by the Corporate Debtor and even consumed without any demur shows that there was no question of any pre-existing dispute. It is also their contention that no correspondence has been placed on record by the Corporate Debtor to demonstrate that the Corporate Debtor was entitled to any discount and/or commission as alleged. The Corporate Debtor had themselves admitted that for the goods it had imported from the Operational Creditor, the balance confirmation as on 31.12.2020 stood at USD 88,81,595 as due and payable to the Operational Creditor. It was also pressed hard that the Corporate Debtor had not only shared balance confirmations as per their own books of account to the Operational Creditor but also made payments to

the Operational Creditor of an amount of USD 714,699 between the period 04.01.2021 to 20.07.2022 against the admitted amount due and payable by it to the Corporate Debtor. This payment post balance confirmation clearly showed that the Corporate Debtor clearly admitted outstanding debt and default which is a valid and proper admission in the eyes of law. The alleged discrepancy between the books of accounts of Corporate Debtor and the Operational Creditor was on account of a unilateral debit note of USD 4.5 million which did not have the approval of the Operational Creditor as at pages 978-979 of APB. It is the contention of the Operational Creditor that as this debit note was issued unilaterally, it cannot be looked upon as a dispute. The Operational Creditor had infact replied back on 01.02.2021 agreeing to look into the debit note as placed at page 979 of APB. The issue of debit-notes as a ground of dispute as contended by the Corporate Debtor was therefore misplaced and lacks foundation. It was therefore contended that Adjudicating Authority had correctly noted that the Corporate Debtor had always acknowledged the unpaid outstanding liability amount which being above the threshold level of Rs 1 cr clearly established debt and default.

24. At this stage we may look into how the Adjudicating Authority has dealt with the issue of pre-existing disputes as raised by the Corporate Debtor. The relevant extracts from the impugned order is as reproduced below:

> *"28. Nonetheless, the <u>Corporate Debtor has consistently acknowledged that 7-8 million is outstanding</u> and this payment is held up because of poor realization from debtors. We find that email dated 03.03.2021 from the Corporate Debtor clearly demonstrates the outstanding debt of Rs USD 8,881,595/-. Though, <u>the Corporate</u>*

Debtor has raised the issue of discounts, write-offs, goods returned and free goods and the Operational Creditor has consistently assured to look into these issues on case to case basis, we are of considered view that a debt of more than Rupees One Crore, which can be said to be undisputed, is certainly in default. Further, even if it is accepted that the Applicant was to be paid upon realization from the customers, it is not the case of the Corporate Debtor that the amount outstanding from the customer along with the value of unsold stock is higher or equal to the amounts to be collected from the customers.

29. It is undisputed fact that the evidence on record pertaining to import of goods by the Corporate Debtor i.e. invoice, shipping bill and confirmation of account balance clearly suggests that the payment was to be made within fixed period as stated on each invoice. These documents nowhere support the agreement dated 21.07.2015 claim to be correct understanding by the Corporate Debtor. We also find that the Corporate Debtor has consistently expressed difficulty in clearing the outstanding dues on account of Covid-19 Pandemic."

(Emphasis supplied)

25. Coming to our analysis and findings, we notice that no material has been placed on record by the Corporate Debtor to show that they had categorically rejected the outstanding dues claimed by the Operational Creditor prior to issue of demand notice. There is no evidence of any outright denial of the liability to pay which has been placed on record by the Corporate Debtor. Furthermore, we notice that Corporate Debtor while admitting the outstanding debt had also admitted in the same breath that they were working to promote the global presence of the Operational creditor in India which affirms that there were no differences between them with regard to the agreement basis which they were conducting their business operations. When we look at the impugned order, we find that the Adjudicating Authority has

considered the entire gamut of facts holistically. We are also satisfied with the findings of the Adjudicating Authority that facts on record speak loud and clear that the Corporate Debtor/Appellant all along admitted that it owed an operational debt to the Operational Creditor which amount was in excess of the threshold limit until their reply to the Section 8 demand notice. When the operational debt had already arisen and become due and invoices raised were not specifically disputed there is nothing on record which detracts from the operational debt having become due and payable. We also notice that debit-notes notwithstanding, the Appellant had acknowledged that they were liable to pay the outstanding operational debt. The Corporate Debtor never disputed or questioned the offer made by the Operational Creditor to look into the debit notes for making appropriate credit adjustments. This puts a serious question mark on the bona-fide of the bogey of pre-existing disputes being subsequently raised by the Corporate Debtor. The alleged disputes claimed by the Corporate Debtor are feeble and not supported by credible evidence. In sum, no real pre-existing dispute is discernible. There is no good ground to establish any real and substantial pre-existing dispute which can thwart the admission of section 9 application against the Corporate Debtor. The Adjudicating Authority therefore does not appear to have committed any error in holding that all requisite conditions necessary to trigger CIRP under Section 9 stands fulfilled.

26. When we look at the impugned order, we also find that the Adjudicating Authority has looked into the judgements which has been relied upon by the

Corporate Debtor in ***Sanjay Bhausaheb Bhange Vs Khushbu Dye Chem Pvt. Ltd.*** in ***CA(AT)(Ins.) No. 621 of 2022*** and ***XYKno Capital Services Pvt. Ltd. Vs Rattan India Power Limited in CA(AT)(Ins) No. 913 of 2022*** and held that that these judgments do not come to the aid of the Appellant since in those cases the Corporate Debtor had not acknowledged the outstanding amount unlike the present case where the outstanding debt has been clearly admitted. We find no sound reasons to disagree with the Adjudicating Authority since in the ***Sanjay Bhausaheb Bhange*** matter, the disputes regarding business model as well as the outstanding amount clearly pre-dated the demand notice which stands in sharp contrast to the factual matrix of this case. Similarly, in the ***XYKno Capital Services*** matter, the outstanding amount had not been acknowledged by the Corporate Debtor because of chaotic management of the consultancy services by the concerned Operational Creditor much prior to the demand notice. Another judgment relied upon by the Corporate Debtor is the judgement of the Hon'ble Supreme Court in ***Sabarmati Gas Ltd vs Shah Alloys (2023) 3 SCC 229***. We entirely agree with the ratio of this judgement that the touchstone of examination of Section 9 application should be the tests laid down in the ***Mobilox judgement supra*** but cannot be unmindful of the fact that the attendant facts and circumstances need to be seen and examined separately for each case to find whether the pre-existing dispute rests on genuine foundation or not and tested on those parameters, for the foregoing reasons explained above, the present dispute alleged by the Corporate Debtor deserves to be brushed aside as spurious.

27. Thus, even on the third test laid down by ***Mobilox judgment supra*** we find that there is nothing credible to substantiate the pre-existence of dispute. To our minds, for the reasons stated above, the grounds of disputes raised by the Corporate Debtor are implausible and therefore deserves to be disregarded being in the nature of a moonshine defence.

28. From the aforesaid discussion and analysis of attendant facts and circumstances, we are of the considered opinion that the Appellant has defaulted in the payment of operational debt which amount had clearly become due and payable above the threshold limit, and further in the absence of any credible or plausible pre-existing dispute, we find that no error has been committed by the Adjudicating Authority in admitting the application under Section 9 of IBC and initiating CIRP. We find no merit in this Appeal. Appeal is dismissed. No Costs.

[Justice Ashok Bhushan]
Chairperson

[Barun Mitra]
Member (Technical)

Place: New Delhi
Date: 13.11.2024

Abdul/Harleen