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IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
INDIRA BANERJEE; J., V. RAMASUBRAMANIAN; J.
CIVIL APPEAL NO. 4583 OF 2022; July 15, 2022
M/S S.S. ENGINEERS & ORS. *versus* **HINDUSTAN PETROLEUM CORPORATION LTD.**

Insolvency and Bankruptcy Code, 2016; Section 8-9 - if the debt is disputed, the application of the Operational Creditor for initiation of CIRP must be dismissed - It is not the object of the IBC that CIRP should be initiated to penalize solvent companies for non-payment of disputed dues claimed by an operational creditor. *(Para 31-32)*

Insolvency and Bankruptcy Code, 2016; Section 8-9 - If the claim is undisputed and the operational debt remains unpaid, CIRP must commence - IBC does not countenance dishonesty or deliberate failure to repay the dues of an Operational Creditor. *(Para 31-32)*

Insolvency and Bankruptcy Code, 2016; Section 7-9 - Noticeable differences in the IBC between the procedure of initiation of CIRP by a financial creditor and by an operational creditor -The NCLT is not a debt collection forum. *(Para 31-32)*

Summary: NCLT admitted an application for initiating CIRP filed by operational creditor - NCLAT set it aside - Supreme Court dismissed and held: NCLT committed a grave error of law by admitting the application of the Operational Creditor, even though there was a pre-existing dispute as noted by it.

For Appellant(s) Mr. Ratnanko Banerjee, Sr. Adv. Mr. Sanjeev Sen, Sr. Adv. Ms. Poonam Verma, Adv. Mr. Sidharth Sethi, AOR Ms. Sakshi Kapoor, Adv. Mr. Avinash Das, Adv.

For Respondent(s) Mr. Tushar Mehta, SG Mr. Sanjay Kapur, AOR Ms. Megha Karnwal, Adv. Mr. Arjun Bhatia, Adv.

O R D E R

This appeal is against a judgment and order dated 10th January, 2022 passed by the National Company Law Appellate Tribunal, Principal Bench, New Delhi allowing Company Appeal (AT)(Insolvency) No. 332 of 2020 filed by the Respondent No. 1 Hindustan Petroleum Corporation Limited (HPCL) and setting aside the order dated 12.02.2020 passed by the National Company Law Tribunal (NCLT), Kolkata, admitting an application filed by the appellant under Section 9 of the Insolvency and Bankruptcy Code (IBC) as Operational Creditor, for initiation of the Corporate Insolvency Resolution Process (CIRP) against HPCL Biofuels Ltd. (HBL), a wholly owned subsidiary of HPCL. The NCLAT directed the Adjudicating Authority NCLT to close the proceedings for CIRP initiated against HBL.

2. On or about 15.11.2018, the appellant filed an application for initiation of CIRP against HBL under Section 9 of the IBC in the Kolkata Bench of the NCLT. On 07.03.2019, HBL filed its reply to the said application made by the appellant and the appellant also filed a rejoinder thereto.

3. By an order dated 12.02.2020, the Adjudicating Authority (NCLT) admitted the application for initiation of CIRP filed by the appellant, rejecting the contention raised by

HBL that there were pre-existing disputes between the parties in respect of the claim of the appellant.

4. From the List of Dates filed by the appellant, it appears that between 27.06.2012 to 30.08.2012, various tenders were floated by HBL for enhancing the capacity of the Boiling Houses of HBL at Lauryia and Sugauli from 1750 TCD to 3500 TCD.

5. The appellant submitted its offer pursuant to the tenders. On or about 15.10.2012, four purchase orders were issued to the appellant in relation to the tender work of enhancing the capacity of the Boiler Houses. On 01.11.2012, Purchase Orders were issued by HBL for enhancing the Juice Heater and Evaporator Section and Pan and Crystallization Section at Sugauli Plant on a turnkey basis.

6. Between 21.11.2012 to 25.03.2013, the appellant raised invoices in respect of the purchase orders. It is not necessary for this Court to go into the details of what transpired between 21.11.2012 when the appellant started raising invoices of HBL and 29.12.2013.

7. Suffice it to mention that on 29.12.2013, HBL sent an email to the appellant pointing out that the appellant had been violating the terms of the purchase order and backing out from its commitments thereunder, thereby causing huge losses to HBL. HBL contended that because of the failure of the appellant to honour its commitments in terms of the Tenders/Purchase Orders it had to procure materials from other vendors.

8. On 02.01.2014, HBL sent a letter to the appellant stating that the appellant had acted in violation of the General Terms and Conditions, inter alia, by raising improper invoices for materials not supplied, not renewing bank guarantees, failing to effect supplies and complete work within the stipulated period. It was alleged that the service rendered and/or materials supplied by the appellant were of poor quality.

9. On 03.01.2014, HBL raised a debit note in respect of consumption by the appellant of spares and consumables from the warehouse of HBL. A series of correspondence followed. By a letter dated 11.4.2014 addressed to the appellant, HBL made allegations with regard to the service rendered and/or goods supplied by the appellants and contended that there was no payment outstanding from HBL to the appellant. On the other hand, HBL claimed that an amount of Rs.1.49 crores was due from the appellant, which amount excluded consequential losses.

10. On 07.5.2014, HBL sent an email to the appellant stating that HBL would not release money to the appellant as the quality of work done by the Appellant was poor and the Appellant had breached the terms and conditions of the Purchase Orders. Further correspondence ensued.

11. Between 11.03.2015 to 27.03.2018 C-forms were issued by HBL to the appellant under Section 8 of the Central Sales Tax Act read with Rules 12(1) of the Central Sales Tax (Registration and Turnover) Rules, 1957. The statutory duty of issuance of C-forms under the Central Sales Tax, do not and cannot constitute acknowledgment of any liability of HBL to the appellant, to make payment. On 09.7.2016, the appellant sent legal notice to HBL through its advocate, demanding payment or alternatively reference of the disputes to arbitration.

12. On 30.08.2017, the appellant sent a demand notice under Section 8 of the IBC to HBL claiming that a sum of Rs. 18 ,12,21,452/- (Rupees eighteen crores twelve lakhs, twenty one thousand four hundred and fifty two) along with interest, was due from HBL

to the Appellant from 30.12.2013. A second demand notice was sent by the appellant to HBL on 07.08.2018. HBL replied to the demand notice dated 25.07.2018 received on 01.08.2018 disputing the claim. It is apparent from the records that there were pre-existing disputes between the parties and on 09.07.2016, a request had been made by the Operational Creditor to HBL to refer the disputes to Arbitration.

13. Sections 8 and 9 of the IBC read :-

"8. Insolvency resolution by operational creditor.—(1) An operational creditor may, on the occurrence of a default, deliver a demand notice of unpaid operational debt or copy of an invoice demanding payment of the amount involved in the default to the corporate debtor in such form and manner as may be prescribed.

(2) The corporate debtor shall, within a period of ten days of the receipt of the demand notice or copy of the invoice mentioned in sub-section (1) bring to the notice of the operational creditor—

(a) existence of a dispute, [1][if any, or] record of the pendency of the suit or arbitration proceedings filed before the receipt of such notice or invoice in relation to such dispute;

(b) the payment of unpaid operational debt—

(i) by sending an attested copy of the record of electronic transfer of the unpaid amount from the bank account of the corporate debtor; or

(ii) by sending an attested copy of record that the operational creditor has encashed a cheque issued by the corporate debtor.

Explanation.—For the purposes of this section, a "demand notice" means a notice served by an operational creditor to the corporate debtor demanding payment of the operational debt in respect of which the default has occurred.

9. Application for initiation of corporate insolvency resolution process by operational creditor.—(1) After the expiry of the period of ten days from the date of delivery of the notice or invoice demanding payment under subsection (1) of section 8, if the operational creditor does not receive payment from the corporate debtor or notice of the dispute under sub-section (2) of section 8, the operational creditor may file an application before the Adjudicating Authority for initiating a corporate insolvency resolution process.

(2) The application under sub-section (1) shall be filed in such form and manner and accompanied with such fee as may be prescribed.

(3) The operational creditor shall, along with the application furnish—

(a) a copy of the invoice demanding payment or demand notice delivered by the operational creditor to the corporate debtor;

(b) an affidavit to the effect that there is no notice given by the corporate debtor relating to a dispute of the unpaid operational debt;

(c) a copy of the certificate from the financial institutions maintaining accounts of the operational creditor confirming that there is no payment of an unpaid operational debt by the corporate debtor, if available;

(d) a copy of any record with information utility confirming that there is no payment of an unpaid operational debt by the corporate debtor, if available; and

(e) any other proof confirming that there is no payment of any unpaid operational debt by the corporate debtor or such other information, as may be prescribed.

(4) An operational creditor initiating a corporate insolvency resolution process under this section, may propose a resolution professional to act as an interim resolution professional.

(5) The Adjudicating Authority shall, within fourteen days of the receipt of the application under sub-section (2), by an order —

(i) admit the application and communicate such decision to the operational creditor and the corporate debtor if,—

(a) the application made under subsection (2) is complete;

(b) there is no payment of the unpaid operational debt;

(c) the invoice or notice for payment to the corporate debtor has been delivered by the operational creditor;

(d) no notice of dispute has been received by the operational creditor or there is no record of dispute in the information utility; and

(e) there is no disciplinary proceeding pending against any resolution professional proposed under sub-section (4), if any.

(ii) reject the application and communicate such decision to the operational creditor and the corporate debtor, if—

(a) the application made under subsection (2) is incomplete;

(b) there has been payment of the unpaid operational debt;

(c) the creditor has not delivered the invoice or notice for payment to the corporate debtor;

(d) notice of dispute has been received by the operational creditor or there is a record of dispute in the information utility; or

(e) any disciplinary proceeding is pending[4] against any proposed resolution professional:

Provided that Adjudicating Authority, shall before rejecting an application under subclause (a) of clause (ii) give a notice to the applicant to rectify the defect in his application within seven days of the date of receipt of such notice from the adjudicating Authority.

(6) The corporate insolvency resolution process shall commence from the date of admission of the application under sub-section (5) of this section."

14. On 15.02.2018, the appellant filed its application under Section 9 of the IBC for initiation of CIRP against HBL, as stated above. By the order dated 12.02.2020, the Adjudicating Authority (NCLT) admitted the said application of the Appellant. The Adjudicating Authority, *inter alia*, held:

"17. As regards the pre-existing dispute, we have gone through all the facts stated by the Corporate Debtor but having regard to the quantum of claim in respect of supplies order, in our considered view, the amount of disputed claim due and payable will be more than Rs. One lakh in any case. Hence, such claims do not help the case of Corporate Debtor in substantial manner. Having said so, we would further refer to the provisional statement attached with the letter of the Corporate Debtor dated June 25, 2014 copy of which has been placed at Page 1779 of Vol.10 of the paper book to find as to what is the factual position as per the stand of Corporate Debtor on various issues. As per this provisional statement, the total purchase order value has been shown as Rs.3818.72 lakhs. There have been several deductions including for service provided by Corporate Debtor to the Operational Creditor in the execution of the contract, entry tax, TDS, WCD, payment to parties/payment to Operational Creditor by the Corporate Debtor/sub-vendors and subcontractors/vendors of the Operational Creditor. These are normal deductions as per business practice and terms of contract. However, it is noteworthy that Liquidated Damage @ 5% amount to Rs.190.94 lakhs, Performance Bank Guarantee to the tune of 673.6 lakhs, work claim of Rs.352.00 lakhs for boiler house extension P.O. finalization and additional work 71 lakh have also been considered. The net effect has been worked out by Corporate Debtor as Rs.500 lakhs receivable from the Operational Creditor. If the boiler house extension and additional work are ignored, the

amount recoverable from the Operational Creditor gets reduced to 63.13 lakhs. Further, if the amount retained for Performance Bank Guarantee is taken into consideration, then the amount payable to Operational Creditor works out at Rs.610.23 lakhs (i.e. 673-63.13). As noted earlier, L.D. is applicable @ 5% amounting to Rs.190,94 lakhs has already been deducted. Further, amount of Rs.400.55 lakhs in respect of Purchase Orders issued at the risk and cost of the vendor have also been deducted. Thus, all recoveries for non-performance/default has been considered and therefore, amount of Performance Bank Guarantee minus recovery i.e., 610.23 lakhs at least becomes payable by Corporate Debtor to the Operational Creditor. As an adjudication authority in the proceedings, we are not suppose to do this kind of working, but to find out the genuineness of the claim of pre-existing dispute, and amount of outstanding debt, it was necessary in the facts and circumstances of the case, hence, it has been so analysed on the basis of the provisional statement prepared and filed by the Corporate Debtor itself. At the cost of repetition, we again state that this statement takes into consideration all these disputes raised by the Corporate Debtor, hence, the amount payable by the Corporate Debtor remains in positive which is more than one lakh ultimately that too when we have considered the project as a whole against the claim of Operational Creditor of undisputed dues of supply portion only. We have also gone through the emails which have been taken into consideration. While preparing this provisional statement. Hence, on the basis of material on record, it cannot be said that any other dispute remains to be considered. Apart from this, the fact which is crucial to note is that the Corporate Debtor has awarded new work orders to the Operational Creditor subsequently which means that all the disputes relating to this contract had been considered/resolved and this fact has remained undisputed. Further, Form "C"s have been issued as late as up to March 2018. We further make it clear that we have analysed the provisional statement with limited objective of admissibility of this application and this analysis cannot be considered as expression of opinion on the amount of claim in any manner which may be actually due and payable."

15. In our considered view, the Adjudicating Authority (NCLT) committed a grave error of law by admitting the application of the Operational Creditor, even though there was a pre-existing dispute as noted by the Adjudicating Authority.

16. When examining an application under Section 9 of the IBC, the Adjudicating Authority would have to examine (i) whether there was an operational debt exceeding Rupees 1,00,000/(Rupees One Lac); (ii) whether the evidence furnished with the application showed that debt exceeding Rupees one lac was due and payable and had not till then been paid; and (ii) whether there was existence of 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. If any one of the aforesaid conditions was not fulfilled, the application of the Operational Creditor would have to be rejected

17. In *Mobilox Innovations Private Limited v. Kirusa Software Private Limited* [1], this Court held:-

"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?*

[1] (2018) 1 SCC 353

If any one 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.

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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)(2)(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."

18. In *K Kishan* vs. *Vijay Nirman Co. (P) Ltd.* [2], cited by the NCLAT in its impugned judgment, this Court held:-

"22. Following this judgment, it becomes clear that operational creditors cannot use the Insolvency Code either prematurely or for extraneous considerations or as a substitute for debt enforcement procedures. The alarming result of an operational debt contained in an arbitral award for a small amount of say, two lakhs of rupees, cannot possibly jeopardise an otherwise solvent company worth several crores of rupees. Such a company would be well within its rights to state that it is challenging the arbitral award passed against it, and the mere factum of challenge would be sufficient to state that it disputes the award. Such a case would clearly come within para 38 of *Mobilox Innovations* [*Mobilox Innovations (P) Ltd.* v. *Kirusa Software (P) Ltd.*, (2018) 1 SCC 353 : (2018) 1 SCC (Civ) 311] , being a case of a pre-existing *ongoing* dispute between the parties. The Code cannot be used *in terrorem* to extract this sum of money of rupees two lakhs even though it may not be finally payable as adjudication proceedings in respect thereto are still pending. We repeat that the object of the Code, at least insofar as operational creditors are concerned, is to put the insolvency process against a corporate debtor only in clear cases where a real dispute between the parties as to the debt owed does not exist……

27. We repeat with emphasis that under our Code, insofar as an operational debt is concerned, all that has to be seen is whether the said debt can be said to be disputed, and we have no doubt in stating that the filing of a Section 34 petition against an arbitral award shows that a preexisting dispute which culminates at the first stage of the proceedings in an award, continues even after the award, at least till the final adjudicatory process under Sections 34 and 37 has taken place."

19. In this Case, the correspondence between the parties would show that HBL had been disputing the claims of the Appellant on the contention that the appellant had not been adhering to the time schedules for completion of the contract work, had been violating the terms of Tender documents and the Purchase Orders, and backing out from its commitments thereunder, thereby causing losses to HBL. HBL was constrained to procure materials from other vendors incurring losses.

20. The correspondence between the parties evince the existence of real dispute, particularly the letter dated 02.01.2014 from HBL to the appellant stating that the

[2] (2018) 17 SCC 662

appellant had *inter alia* raised improper invoices for materials not supplied and had failed to effect supplies and complete work within a stipulated period; debit note dated 03.01.2014 raised by HBL in respect of consumption by the appellant of spares and consumables from the warehouse of HBL; letter dated 11.04.2014 from HBL to the Appellant, *inter alia,* contending there was no payment outstanding from HBL to the appellant and claiming that a sum of Rs.1.49 Crores was due from appellant to the HBL excluding consequential losses; an email dated 07.05.2014 from HBL to the appellant declining to release money claimed by the appellant on the ground of poor quality of work and breaches of the terms and conditions of the Purchase Order.

21. Going by the test of existence of a dispute, it is clear that HBL had raised a plausible defence. It was not for the Adjudicating Authority to make a detailed examination of the respective contentions and adjudicate the merits of the dispute at this stage.

22. As held by the NCLAT :-

"The facts of the present case are being examined in the light of the law laid down by the Hon'ble Supreme Court, though the Learned Counsel for the 'Operational Creditor' has strenuously contended that the issuance of further work orders and the Notice issued by the 'Operational Creditor' invoking Arbitration does not amount to Existence of a Dispute', the nature of communication on record with rival contentions clarify the 'Existence of a Dispute' between the parties prior to issuance of the Demand Notice. It has been time and again held that 'it is enough that a 'dispute exists' between the parties.

The communication between the parties as noted in para 10 read together with the Arbitration invoked by the 'Operational Creditor', we are of the considered view that there is an 'Existence of a Dispute' between the parties which is a genuine dispute and not a spurious, patently feeble legal argument or an assertion of fact unsupported by evidence."

23. The learned NCLAT rightly observed that a perusal of the "Tender Enquiry dated 27.06.2012", "Instructions to Bidders", "General Conditions of Contract" and "Special Conditions of Contract", showed that the tender was for '*design, engineering, manufacture, procurement, supply, transportation to site, transit and storage, insurance storing at site, project management, civil work, mechanical works, electrical works, instrumentation work, mechanical works, electrical works, instrumentation work, erection, installation interfacing, testing, commissioning, performance testing, putting into successful commercial operation and handing over additional equipment goods, and material centrifugal section including civil foundation for enhancing the boiling house capacity from 1750 TCD to 3750 TCD on Lumpsum Turnkey Basis including civil foundation work'*. It was also not in dispute that the appellants had been issued further work on 13.06.2013 and 08.8.2013 all on Lumpsum Turnkey Basis.

24. The NCLAT held that the execution of the contract work being on a lumpsum turnkey basis, the Appellant contractor was responsible for the entire execution of the work, as per specifications and to the satisfaction of HBL. On completion of the work, the Appellant contractor was to give notice of such completion to the site in charge, who would inspect the work and furnish the Appellant contractor with a Completion Certificate indicating defects, if any, in the contract work and the date of completion of the contract work.

25. Referring to the letter dated 11.08.2013 of HBL to the Appellant, the NCLAT found that it was the case of HBL that the Appellant, as contractor, had delayed the

performance of its obligations in terms of the contract. In the aforesaid letter, HBL enumerated the lacuna and lapses of the Appellant in the performance of the contract and the various breaches of contract committed by the Appellant and also made a categorical assertion that till 31.07.2013, there was no amount outstanding from HBL to the Appellant. Rather there was a recovery from the Appellant.

26. In the impugned order, NCLAT set out a communication dated 02.01.2014 from HBL to the Appellant giving details of the acts and omissions of the Appellant, which tantamounted to breaches of contract on the part of the Appellant. Several other letters were also set out in the impugned order.

27. The impugned order takes note of the averment in the Appellant Operational Creditor's Reply before the NCLT that despite several requests and reminder letters from 2013 to 2017 , the Corporate Debtor HBL did not pay the amounts due, but raised baseless allegations and disputes.

28. The NCLAT found:

"13. ……. It is the case of the 'Operational Creditor' that there is no 'Existence of Dispute' prior to the issuance of Demand Notice. In their email dated 08.04.2013 , in relation to the Minutes of the Meeting, the 'Operational Creditor' had clarified that work progress is subject to prompt payments. July 31, 2013 was decided as the commissioning date subject to immediate and prompt payment made by the 'Corporate Debtor'. The 'Operational Creditor' had always shown their willingness to commission and perform their obligations and their senior personnel were stationed at the site of the 'Corporate Debtor' and additional staff always visited from time to time. It was only because of pendency of payment of the dues that the 'Operational Creditor' had faced difficulties in executing the ongoing Project. The 'Corporate Debtor' was making ad hoc payments but not as per the bills raised.

14. It is strenuously contended by the Learned Counsel that the conduct of the 'Corporate Debtor' in awarding fresh Purchase Order in August 2013 at the fag end of the completion of the previous 6 orders, while at the same time, complaining against their performance, is selfcontradictory and goes to show the malafide intention of the 'Corporate Debtor'. It is the case of the 'Operational Creditor' that all equipment supplied was of good quality and all the valves which were procured were from a vendor mandated by the 'Corporate Debtor' only. If the 'Corporate Debtor' was dissatisfied with the quality of work or substandard material supplied, there are no substantial reasons as to why new contracts were awarded at the fag end of the previous 6 contracts. 87% of the material and services were already completed as per the billing breakup and therefore the question of short supply or purchase of additional material by the 'Corporate Debtor' does not arise. It is also vehemently contended that the 'Operational Creditor' was constrained to stop supply to the 'Corporate Debtor' only on account of failure of payments of pending principal dues which amounts to more than Rs.13 Crores. The 'Corporate Debtor' continued to raise various debit notes unilaterally without any supporting documentation, for which the 'Operational Creditor' cannot be held responsible.

15. The 'Operational Creditor' vide email dated 02.02.2014 i.e. one month after the aforenoted letter sought for release of payment. Once again the 'Corporate Debtor' on 04.02.2014 and on 28.02.2014 reiterated the poor performance of the 'Operational Creditor' on account of which huge losses were incurred.

16. On 29.03.2014, it is the case of the 'Corporate Debtor' that the 'Operational Creditor' had abandoned the site and therefore, the 'Corporate Debtor' had to take over the Project and make all the relevant payments to the vendor.

19. It is pertinent to note that on 09.07.2016, 'prior to the issuance of the Demand Notice under Section 8 of the Code', the 'Operational Creditor' invoked Arbitration pursuant to the 8 project orders issued by the 'Corporate Debtor', which itself substantiates the 'Existence of a Dispute'. In the

'Notice' invoking Arbitration, the 'Operational Creditor' has stated that there is an outstanding of Rs.18,12,21,452/- and has further stated that they are ready to settle the disputes through Arbitration.

22. The communication between the parties as noted in para 10 read together with the Arbitration invoked by the 'Operational Creditor', we are of the considered view that there is an 'Existence of a Dispute' between the parties which is a genuine dispute and not a spurious, patently feeble legal argument or an assertion of fact unsupported by evidence".

29. The HBL raised serious allegations against the appellant of breach of its contractual commitments. From the letter of HBL dated 02.01.2014, it is evident that HBL had been contending *inter alia* that work of erection and commissioning of electric power had not been done, the dead line of completion of the contract work had not been adhered to and the quality of the equipment supplied and/or work done was of poor quality.

30. This Court finds that there was a pre-existing dispute with regard to the alleged claim of the appellant against HPCL or its subsidiary HBL. The NCLAT rightly allowed the appeal filed on behalf of HBL. It is not for this Court to adjudicate the disputes between the parties and determine whether, in fact, any amount was due from the appellant to the HPCL/HBL or vice-versa. The question is, whether the application of the Operational Creditor under Section 9 of the IBC, should have been admitted by the Adjudicating Authority. The answer to the aforesaid question has to be in the negative. The Adjudicating Authority (NCLT) clearly fell in error in admitting the application.

31. The NCLT, exercising powers under Section 7 or Section 9 of IBC, is not a debt collection forum. The IBC tackles and/or deals with insolvency and bankruptcy. It is not the object of the IBC that CIRP should be initiated to penalize solvent companies for non-payment of disputed dues claimed by an operational creditor.

32. There are noticeable differences in the IBC between the procedure of initiation of CIRP by a financial creditor and initiation of CIRP by an operational creditor. On a reading of Sections 8 and 9 of the IBC, it is patently clear that an Operational Creditor can only trigger the CIRP process, when there is an undisputed debt and a default in payment thereof. If the claim of an operational creditor is undisputed and the operational debt remains unpaid, CIRP must commence, for IBC does not countenance dishonesty or deliberate failure to repay the dues of an Operational Creditor. However, if the debt is disputed, the application of the Operational Creditor for initiation of CIRP must be dismissed.

33. We find no grounds to interfere with the judgment and order of the NCLAT impugned in this appeal.

34. The appeal is dismissed.

35. Needles to mention that the appellant may avail such other remedies as may be available in accordance with law including arbitration to realise its dues, if any.

36. Pending applications, if any, stand disposed of accordingly.