NATIONAL COMPANY LAW APPELLATE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

Company Appeal (AT) (Insolvency) No. 1383 of 2023

[Arising out of the Impugned Order dated 02.08.2023 passed by the Adjudicating Authority, National Company Law Tribunal, Mumbai Bench-IV in C.P. (IB) No. 903/MB-IV/2022]

In the matter of:

Korea Trade Insurance Corporation (Ksure)
A Company Having its office at
14, Jongno, Jongno-gu, 110-729, Seoul,
South Korea

.... Appellant

Versus

Amrit Polychem Pvt. Ltd
Registered Office:
404, Gurukrupa, 133 Kazi Sayed Street,
Masjid Mumbai,
Mumbai-400003, Maharashtra, India

.... Respondent

Present:

For Appellant : Mr. Sarthak Varma, Sr. Advocate with Mr. Manish Dhir Mr. Shantanu Parmar, Mr. Balram, Mr. Vivek Tyagi, Advocates.

For Respondent : Mr. Abhijeet Sinha, Sr. Advocate with Ms. Prachi Johri, Mr. Saikat Sarkar, Ms. Heena Kochar, Ms. Mrigangi Parul, Advocates.

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

Per: Barun Mitra, Member (Technical)

The present appeal filed under Section 61(1) of Insolvency and Bankruptcy Code 2016 ('**IBC**' in short) by the Appellant arises out of the Order dated 02.08.2023 (hereinafter referred to as '**Impugned Order**') passed by the

Adjudicating Authority (National Company Law Tribunal, Mumbai Bench-IV) in Company Petition (IB) No. 903/MB-IV/2022. By the impugned order, the Adjudicating Authority has dismissed Section 9 application filed by the Appellant-Korea Trade Insurance Corporation. Aggrieved by the impugned order, the present appeal has been preferred by the Appellant.

2. Coming to the brief facts of the case, the Respondent-Amrit Polychem Pvt. Ltd. (**"APL"** in short) had placed three purchase orders on JT Corporation (**"JTC"** in short) for supply of certain goods. In terms of the Purchase Orders (**"PO"** in short) and related Proforma Invoices (**"PI"** in short), payments were due after 90 days from the Bill of Lading date of the goods under shipment. Appellant-Korea Trade Insurance Corporation (**"KTIC"** in short) is an insurance company for the supplier of goods-JT Corporation (**"JTC"** in short). These three PIs as placed at page 87-89 of Appeal Paper Book (**"APB"** in short) is as tabulated below for easy reference:

Proforma Invoice (PI)	***PI Date***	***Proforma Invoice No.***	***PI Amt. (USD)***	***Manufacturer***	***Goods required to be Supplied***
First PI	*02.01.2017*	*JT-17-01 – 02 - AMRIT*	*124,000*	*OCI Company Limited*	*Toluene Diisocynate – 40MT*
Second PI	*19.04.2017*	*JT - 17 - 04 – 19 – AMRIT*	*114,000*	*Kumho Mitsui, Korea*	*Polymeric MDI M–200– 40MT*
Third PI	*21.04.2017*	*JT - 17 - 04 – 21 - AMRIT*	*171,000*	*Kumho Mitsui, Korea*	*Polymeric MDI M–200– 60MT*

As regards the first PI, the goods were not supplied to the Respondent within the due date of 31.01.2017 and no payments were made thereto. While goods were supplied in terms of the second and third PI, delayed payment was made against the second PI by the Respondent but no payment was made by them against the third PI on purported grounds of non-supply of goods against the first PI which had caused losses to them and entitled them to claim compensation by adjustment against third PI. Due to the non-receipt of payment by JTC, the Appellant-KTIC being the insurer company reimbursed JTC as the insured entity. Following this reimbursement, the debt due from the Respondent-Corporate Debtor was assigned by JTC to the Appellant by a Letter of Assignment (**"LoA"** in short) dated 20.12.2017. A Demand Notice was issued by the Appellant to the Corporate Debtor on 03.10.2019. The Corporate Debtor replied to the Demand Notice on 01.12.2019 in which they denied the claims raised by the Appellant following which the Appellant filed the Section 9 petition before the Adjudicating Authority on 21.07.2020. The Adjudicating Authority however dismissed the Section 9 application on 02.08.2023 on grounds of pre-existing dispute. Aggrieved by the impugned order, the Appellant-KTIC has come up in appeal.

3. Making his submissions on behalf of the Appellant, Shri Sarthak Verma, Ld. Senior Counsel submitted that the Respondent had categorically and unequivocally admitted their liability in their e-mail dated 26.09.2017 addressed to the Appellant which established existence of debt and default. It was also emphatically asserted that each PO carried a separate and distinct number and constituted a separate contract with separate terms and conditions. Hence, the Corporate Debtor could not have adjusted the claim arising out of the third PI against the first PI. In support of their contention, reliance was placed upon the judgment of this Tribunal in ***Naik Environment Engineers Pvt. Ltd. Vs M/s***

Indiabulls Constructions Ltd. in CA(AT)(Ins) No. 790 of 2019 that when two POs are distinct, separate and unconnected, they do not form part of a running account and payments against one PO cannot be stopped on grounds of dispute in another PO. Submission was also made that the debt owed to the JTC by the Corporate Debtor had been legally assigned by JTC to the Appellant. It was also vehemently contended that the Respondent had not disputed the assignment of the debt by JTC to the Appellant-KTIC and therefore by virtue of this assignment the Appellant had qualified to be treated as Operational Creditor in terms of Section 5(20) of IBC. In any case, it was contended that it is settled law in terms of the judgment of this Tribunal in ***Ranjit Kapoor vs Asset Reconstruction Co Ltd in CA(AT)(Ins) No. 410 of 2018*** that the validity and genuineness of an assignment of debt does not lie within the scope and remit of the Adjudicating Authority since insolvency proceedings are summary proceedings and can only be decided in a civil suit. Furthermore, the validity of the LoA had already been established in another proceeding before another bench of the NCLT which decision of the NCLT not having been challenged, has already acquired finality. In such circumstances, the Corporate Debtor cannot question the validity of the LoA or the fact of the stepping into the shoes of JTC by the Appellant-KTIC as an Operational Creditor. It was therefore contended that the objection raised by the Corporate Debtor that the Appellant cannot claim the status of an Operational Creditor is unsustainable in view of the fact that the LoA dated 20.12.2017 had specified in clear terms that the debt owed by the Corporate Debtor had been assigned to the Appellant by JTC. Contention was also made that the Corporate Debtor having failed to get their alleged claim arising out of the first PI dated 02.01.2017 duly adjudicated, the claim had become time-barred. It was submitted that such a time-barred and out of date uncrystallized claim cannot become a ground for pre-existing dispute in a Section 9 petition. In such circumstances, there were no cogent grounds for the Adjudicating Authority to have dismissed the Section 9 application filed by the Appellant particularly when the twin ingredients of undisputed debt and default stood fulfilled.

4. Rebutting the arguments and contentions raised by the Appellant, Shri Abhijeet Sinha, Ld. Senior Counsel for the Respondent strenuously contended that the Section 9 application was not maintainable on the part of the present Appellant-KTIC since they did not fall in the category of Operational Creditor as defined under Section 5(20) of the IBC since the operational debt claimed by JTC was required to be “legally” assigned which requirement was not fulfilled. Buttressing their contention, it was submitted that the LoA is neither signed by any party nor carried the seal of JTC. The Appellant also failed to produce the copy of the Insurance Agreement basis which they had claimed to have reimbursed the unpaid amount of the third PI to JTC. Moreover, the LoA lacked requisite stamping as stamp duty was not paid. It was asserted that the Appellant cannot seek refuge on the grounds that they lacked knowledge of the procedural requirements of stamping as mandated under Indian laws since they had affixed stamps on the Power of Attorney filed by them which implied that they were conversant with the requirements under Indian Law. Since the document by which the debt has been assigned is also not registered, no valid assignment of the debt can be said to have taken place in terms of Section 17 of the Registration Act, 1908. Besides the fact that the Appellant did not qualify to be an Operational Creditor who could file the Section 9 application, it was emphatically asserted that the Section 9 application was rightly dismissed by the Adjudicating Authority since there was clear evidence of pre-existing dispute. Elaborating on the presence of pre-existing dispute, it was submitted that in their e-mail dated 26.09.2017 sent to the Appellant, they had clearly apprised the Appellant that the issue of loss suffered by them due to non-shipment of goods in the first PI with JTC was a live matter and that they had raised with JTC the need to set-off their claim of loss against other invoices. It was also added that since the LoA was dated 20.12.2017, the Appellant cannot feign ignorance about the e-mail the dated 26.09.2017 in which the issue of counter-claim and adjustment had been raised which therefore clearly signified ongoing dispute between JTC and the Respondent-Corporate Debtor. It was contended that the Appellant was bound by the counter-claim when exercising their rights as an assignee. Moreover, as the Corporate Debtor had already adjusted the payment claimed in the third PI against the loss suffered on account of non-supply of goods under the first PI, the Appellant did not gain any interest in the alleged outstanding payment and at best was vested only with the right to sue. Much emphasis was also laid on the fact that the Corporate Debtor was a solvent company with a positive net-worth and had never committed any default in repayment of loan and cannot be unnecessarily subjected to the rigours of CIRP. It was also contended that the Appellant had instituted the Section 9 application against the Corporate Debtor for the purpose of debt recovery which goes against the spirit and ethos of IBC and has been rightly dismissed by the Adjudicating Authority.

5. We have duly considered the arguments advanced by the Learned Counsel for the parties and perused the records carefully.

6. Before we come to analysing the facts of the present case, it would be useful to run through the statutory scheme with regard to admission or rejection of Section 9 application. A pre-requisite for filing a Section 9 application is laid down under Section 8 of the IBC which mandates the Operational Creditor to deliver a Demand Notice on the Corporate Debtor on occurrence of a default for payment of unpaid operational claims. Section 8(2) provides that Corporate Debtor on the receipt of the Demand Notice is required to bring to the notice of the Operational Creditor existence of dispute, if any, within a period of 10 days. Thus, the existence of dispute and its communication to the Operational Creditor is statutorily warranted in terms of Section 8 of the IBC which is as follows:

> *"Section 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, [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 2[payment] of the operational debt in respect of which the default has occurred."

7. Coming to the sequential provision as laid down under Section 9 of the IBC, sub-section (1) thereof entitles the Operational Creditor to file an application for initiation of CIRP of the Corporate Debtor in the event he does not receive the outstanding payment or Notice of dispute as provided for under Section 8(2). Section 9(1) reads as follows:

> *"Section 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 sub-section (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."*

Further, Section 9(5)(ii) contemplates that Adjudicating Authority shall reject the application filed under sub-section (1) of Section 9 if the Notice of dispute is received by the Operational Creditor or there is evidence of record of dispute in the Information Utility. Section 9(5)(ii) reads as follows:

> *"(5) The Adjudicating Authority shall, within fourteen days of the receipt of the application under subsection (2), by an order—*
> *(i).....*
> *(ii) reject the application and communicate such decision to the operational creditor and the corporate debtor, if—*
> *(a) the application made under sub-section (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 against any proposed resolution professional:
Provided that Adjudicating Authority, shall before rejecting an application under sub-clause (a) of clause (ii) give a notice to the applicant to rectify the defect in his application within seven days(i) of the date of receipt of such notice from the adjudicating Authority."

8. In the present facts of the case, the Section 8 Demand Notice was issued on 03.10.2019 by the Appellant while the Notice of dispute was raised on 01.12.2019 by the Corporate Debtor. It is an undisputed fact that the Notice of dispute was served upon the Appellant though beyond the stipulated ten days' period. Be that as it may, we also notice that the Notice of dispute though beyond the ten days' period, nevertheless it was well before the filing of the Section 9 application which was on 21.07.2020. It is well settled that as long as disputes existing between the parties are shown to have arisen prior to the Section 8 Demand Notice, it is sufficient basis for the Adjudicating Authority to reject a Section 9 application. We also find no infirmity in the decision of the Adjudicating Authority to place reliance on the judgement of this Tribunal in ***M/s Brand Realty Services Ltd. Vs M/s Sir John Bakeries India Pvt. Ltd. in CA(AT)(Ins) No. 958 of 2020*** wherein it has been held that even in absence of Notice of dispute, the Adjudicating Authority can reject the Section 9 Application as long as it can be shown that there is a record of dispute. We are of the view that in this case, once Notice of dispute is raised before the filing of the Section 9 application, even though it fails to comply to the window of ten days period assigned for this purpose, it does not lose its sanctity or relevance in signifying the presence of pre-existing disputes.

9. Having noticed the relevant statutory provisions, we now delineate the short point for consideration which is whether there was any discernible preexisting dispute surrounding the debt claimed to be due and payable by the Appellant-Operational Creditor.

10. The law on this subject has been laid down crystal clear by the Hon'ble Supreme Court in ***Mobilox Innovations Private Limited Vs. Kirusa Software Pvt Ltd (2018) 1 SCC 353*** where in para 33 of the said judgement, the following has been laid down:

> *"…What is important is that the existence of the dispute and/or the suit or arbitration proceeding must be pre-existing i.e. it must exist before the receipt of the demand notice or invoice, as the case may be. In case the unpaid operational debt has been repaid, the corporate debtor shall within a period of the self-same 10 days send an attested copy of the record of the electronic transfer of the unpaid amount from the bank account of the corporate debtor or send an attested copy of the record that the operational creditor has encashed a cheque or otherwise received payment from the corporate debtor [Section 8(2)(b)]. It is only if, after the expiry of the period of the said 10 days, the operational creditor does not either receive payment from the corporate debtor or notice of dispute, that the operational creditor may trigger the insolvency process by filing an application before the adjudicating authority under Sections 9(1) and 9(2)…."*

The Hon'ble Supreme Court has further proceeded to hold that the dispute should not however be a patently feeble legal argument or an assertion of facts unsupported by evidence. In para 51 of the above judgment, following has been laid down:

> *"…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 fats 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. To begin with our analysis in terms of the guiding precepts laid down in the ratio of ***Mobilox judgement supra*** as to whether there was any pre-existing dispute, at this stage, we may turn our attention to the Notice of Dispute raised by the Corporate Debtor in reply to the Section 8 Demand Notice. The relevant extracts therefrom read as follows:

Date: 1st December 2019

To:
Korea Trade Insurance Corporation,

Re: Letter dated 3rd October, 2019 ("said letter") addressed by you through your advocate and chief consultant Mrs. Sushila Ram .....to us in respect of the said Third Sale Invoice.

Dear Sir/Madam,
....

3. We state that your letter doesn't warrant any paragraph wise reply for the reasons and facts stated hereafter; and also as much as the same is entirely <u>based on the false claims and contentions; and further addressed to us with malafide intentions</u> for the reasons best known to you. However, we hereby vehemently <u>deny your claims</u> on the following grounds which are prejudice to one another;

a. At the outset, <u>we are not liable to make any payments to you under the Third Sale Invoice</u> (as defined hereunder) since the Third Sale Invoice is issued to us by JT Corporation; and <u>Third Goods Orders thereunder are provided to us by JT Corporation under the Third Sale Invoice as per the terms agreed upon between JT Corporation and us; and not by you</u>.

b. ....

c. You had for the first time vide your email [21/09/2017] asked us to provide you with certain information on the Third Sale Transaction. Upon your request, we replied to you by notifying you about the existing dispute between JT Corporation and us in respect of the Third Sale Transaction (as defined hereunder) and we are seeking to resolve the said issue/settle the said matter vide our email dated [26/09/2017] …… We state that despite the existing dispute between JT Corporation and us you (being an insurance company) made the payment under the Third Invoice Goods to JT Corporation.

d. In your Letter, you have relied upon the letter of assignment (absence of date of said assignment) made and executed by JT Corporation addressed to you which is provided to us only vide your said Letter ("said Assignment Letter"). We have not granted any consent or confirmation to the Assignment Letter and/or acknowledged or confirm the Assignment Letter; and the same is provided to us vide your Letter only on [08/10/2019] after almost two years from the date of execution (which speaks volumes of your intension to deceit and defrauding us by coughing up the Third Sale Amount and interest amounts from us for no reason whatsoever). It is pertinent to note that the Assignment Letter is executed after our email dated [26/09/2017] which is addressed by us to you thereby notifying you of the existing dispute between the JT Corporation and us (in furtherance of your email dated [21/09/2017] whereby you requested us to provide the information on the Third Sale Transaction). We state that the same is executed as an afterthought. The said Assignment Letter is just a plain letter signed only by JT Corporation (and not you) without bearing any proper stamp duties, etc. in any event the said Assignment Letter ought to have been executed with the insurance documents and bear proper stamp duties under the applicable laws had it been valid document; to have the power to recover the monies as an insurance company and/or otherwise from us ill case of any default in making the payment.

We were neither the party to the contract executed between JT Corporation and the insurance company; and neither consented to such assignment of debt as we were alien to the terms and conditions laid down in the said assignment.

….

f. We state that very conveniently you have chosen to stay silent on the First Contract confirmed by you vide OFFER NO. JT-17-01-02-AMRIT Dt.02.01.2017 for supply of 40 Mts of TOLUENE DI-ISCOYANATE at USD 3100/MT totaling to USD 124000.00, which you have failed to honor *resulting in material disputes of Third Transaction Payment and have annexed the documents which are favoring you solely.*

(Emphasis supplied)

12. When we look at the above reply to the Demand Notice, we notice that the Corporate Debtor had flatly denied that they were liable to make any payments under the third PI and held the claims raised to be as false. It was also clearly mentioned in the said letter that they had already notified the Appellant on 26.09.2017 about the existing dispute between the Corporate Debtor and JTC with regard to third PI. There is also a clear mention that dishonoring of first PI by JTC has led to the present dispute in the payment of the third PI. The letter also mentions that prior to the signing of the LoA between JTC and the Appellant, there was no consultation with the Corporate Debtor nor their consent obtained thereto. It was also alleged that the LoA was not a valid document as it was executed without insurance documents and was deficient of stamp duties under applicable law besides having been executed as an afterthought. We are therefore convinced that the tone and tenor of the reply to the Demand Notice unabashedly manifests existence of dispute. Even though this Notice of Dispute was sent beyond the prescribed ten days period from the date of issue of Demand Notice, it does not negate the existence of dispute.

13. It is, however, the case of the Appellant that the Corporate Debtor in their e-mail dated 26.09.2017 addressed to them had clearly acknowledged the outstanding dues. It is also contended that in the said email the Corporate Debtor had admitted that they had failed to pay the outstanding amount due to JTC, and that they had no intentions to hold back the payment. Another related argument raised is that the Adjudicating Authority wrongly came to the conclusion that there was a pre-existing dispute basis a counter-claim raised by the Corporate Debtor in respect of the third PI qua the first PI. The Adjudicating Authority committed an error in failing to appreciate that the first PI and third PI were unconnected contracts. It is contended that the Corporate Debtor could not raise a counter-claim in respect of unconnected contracts and use this counter-claim, which being unsettled, uncrystallized and time-barred, could not have been held to be a valid ground of pre-existing dispute.

14. Per contra, it is the contention of the Respondent that at no stage had they acknowledged any outstanding liability towards JTC. It is their case that JTC had delayed the supply of goods in respect of the first PI and hence concerns were raised by them about the price difference in case the goods had to be purchased from the local market. These concerns were expressed through several e-mails as placed in their Reply affidavit to the Section 9 application filed before the Adjudicating Authority. The Corporate Debtor had notified the Appellant about the outstanding disputes in relation to the third PI in their e-mail dated 26.09.2017. Inspite of having been notified of the dispute, the Appellant had proceeded to make payment to JTC in respect of goods supplied under the third PI. The Appellant cannot initiate proceedings under the IBC for recovery of amounts from the Corporate Debtor which had been disputed by the Corporate Debtor even before the payment was made by the Appellant to JTC.

15. For a better appreciation of the fact whether the email dated 26.09.2017 was an acknowledgement of debt or not, it may be useful to have a look at the contents of the said email which is as reproduced below:

2017-09-26 17:43

From "Hemal Parekh"<hemal@amritpolychem.com>
To "Abhishek Aggarwal"<abhishek.aggarwal@ksure.or.kr>
Cc. appl@ymail.com, sales@induschem.com, info@induschem.com

Dear Sir,

With reference to your below, we would like to inform you that we are in business relationship with JT Corporation since 2015 and we had done volume business with them till date <u>and our all payment made to them are on time as per due date</u>. We had booked 40 Mts of TOLUENE DIISOCYANATE 80/20 at USD 3100/MT Totaling to USD 124000.00 vide their Offer No. JT-17-01-02-AMRIT Dt. 02/01/2017 to be shipped on or before 31/01/2017 as per contract copy of the same is attach for your ready reference. After that <u>when we asked for shipping schedule to their Agent Induschem on 19/01/2017 they informed that OCI has gone shutdown and shipment will take place around 10/02/2017. This are all are not true reason for delay</u> in shipment by that price of raw material increased lot and they <u>purposely not honor their commitment due to which we have incurred huge loss</u> as we have to buy from local market at Higher price to fulfil our commitment given to our customers. At present market price of material is around USD 4800.00 i.e. increased by USD 1700/-PMT Totaling for 40 Mts difference will be USD 68000.00, We are in market from last 38 years & we never fail in our commitments to our customers as well as our suppliers. We had good reputation in market. <u>We had write many email to them to settle the issue but they are not willing to settle and giving false statement.</u> Even though we had order another product Polymeric MDI M-200 100 MTS @USD 2850.00 PMT Totaling to USD 285000.00 which they shipped Vide their Invoice No. JT-17-04-19-AMRIT Dt. 29/04/2017 for USD 114000.00 & JT-17-04-21-AMRIT Dt. 29/04/2017 for USD 171000.00 <u>which is due for payment after 90 days from BL Date i.e. on 28/07/2017 during this period also we requested them to settle the issue but they have not take any action</u>.

<u>Even though we had paid Invoice of USD 114000.00 on 03/08/2017 which clearly shows our intention that we are not willing to hold their payment or not interested in refusal of payment but as businessmen they should also have some ethics and have to accept our loss claim & settle the same</u> so that we can release their payment but they have not willing to do so. We had also paid payment of other business deal of USD 98560.00 on due date of 19/09/2017. We are enclosing

herewith copy of ledger of JT Corporation from 01/04/2016 till date for your reference.

We hope that you will understand our situation & position in this deal.

Best Regards,
Hemal Parekh

16. When we peruse the above e-mail dated 26.09.2017, we have no reasons to disagree with the findings returned by the Adjudicating Authority that the Corporate Debtor had clearly conveyed the existence of a counter-claim arising out of first PI. While agreeing not to hold back payment, it had been stated by the Respondent in no unclear terms that JTC must accept the losses suffered by the Corporate Debtor due to non-shipment and timely supply of goods and need to settle their claims. There is also clear imputation made about the misconduct on the part of JTC arising out of false statements made by them about the supply of goods against the first PI. Hence, the e-mail dated 26.09.2017 by no stretch of imagination can be construed as a letter of acknowledgment/admission of undisputed debt as has been claimed by the Appellant.

17. Quite apart from the fact that the above email dated 26.09.2017 cannot be viewed as an acknowledgement of outstanding debt, it is equally significant to note that LoA given in favour of the Appellant by the JTC is dated 20.12.2017 while the e-mail in which the issue of counter-claim and related dispute had been raised on 26.09.2017 preceded the LoA. It is of no less significance to note that the email of 26.09.2017 was not issued at the initiative of the Corporate Debtor but was sent in response to the clarifications sought from the Corporate Debtor by the Appellant on 21.09.2017 with respect to the status of outstanding payments of first PI. Since their doubts had been clarified by the Corporate Debtor in a detailed email reply, the Appellant cannot claim that they were unaware of the existence of counter-claim dispute agitated by the Corporate Debtor before the LoA. Thus, we have no reasons not to agree with the Respondent that the Appellant had been kept abreast by them of their ongoing dispute with JTC in respect of the first PI.

18. Since the JTC had purportedly delayed the supply of goods in respect of the first PI, concerns had been raised by the Corporate Debtor from time to time about the price differential in case the goods had to be sourced from the local market. These concerns were expressed through several e-mails which have been placed in the Reply affidavit of the Corporate Debtor to the Section 9 application filed before the Adjudicating Authority which remain uncontroverted. These e-mails dated 20.01.2017, 02.02.2017 and 03.08.2017 which appear at pages 304-307 of APB cannot be brushed aside. When we see these e-mails which when read in conjunction with the email of the Respondent addressed to the Appellant on 26.09.2017, it is unmistakably clear that the Corporate Debtor had made it known to both JTC as well as the Appellant that payment for the goods against the third PI was not released to JTC due to non-settlement of claims of losses suffered by them on account of delayed shipment of goods by JTC under first PI compelling them to purchase goods at a higher price from alternative sources thereby incurring losses. Thus, the alleged loss incurred by the Corporate Debtor in the context of the first PI due to non-shipment of goods by JTC remained a matter of dispute between the parties.

19. In such circumstances, we find no good grounds to differ with the findings of the Adjudicating Authority that the Appellant was well aware of the fact before stepping into the shoes of the JTC that there was a pre-existing dispute between the Corporate Debtor and JTC and this was sufficient ground to dismiss the Section 9 application.

20. The object and purpose of IBC is to reorganize and revive the Corporate Debtor and Section 9 applications are not contemplated to decide disputes between the parties regarding their operational dues. The provisions of IBC cannot be turned into debt recovery proceedings. Where any operational creditor seeks to initiate insolvency process against a Corporate Debtor, it can only be done in clear cases where no real dispute exists which necessitates further adjudication by a competent court. Once plausibility of a pre-existing dispute is noticed and the dispute is not found to be prima facie spurious or hypothetical, the Adjudicating Authority is not required to enter into final adjudication but to reject the Section 9 application. Present is a case where pre-existing dispute is writ large and that being so, Section 9 application deserved to be rejected as has been rightly done by the Adjudicating Authority.

21. In view of the fact that we are satisfied with the findings of the Adjudicating Authority dismissing the present Section 9 application on grounds of pre-existing dispute, we do not find it necessary or relevant to go into the other issues raised by the Respondent viz that the Section 9 application was barred by limitation or that the Appellant did not qualify to be an Operational Creditor since the LoA was an invalid and unregistered document which only provided right of subrogation and therefore the debt did not become legally assigned to the Appellant in terms of Section5(20) of the IBC.

22. For the reasons discussed above, the Appeal is found to be devoid of merit and stands dismissed. We find no reasons to modify the impugned order. We however allow liberty to the Appellant to seek alternative recourse that may be available to them before any appropriate forum in accordance with law. No costs.

[Justice Ashok Bhushan]
Chairperson

[Barun Mitra]
Member (Technical)

Place: New Delhi
Date: 15.10.2025

Abdul/ Harleen