

**NATIONAL COMPANY LAW APPELLATE TRIBUNAL  
PRINCIPAL BENCH: NEW DELHI**

**Company Appeal (AT) (Insolvency) No. 2067 of 2024**

**[Arising out of the Order dated September 11, 2024, passed by  
the 'Adjudicating Authority' (National Company Law Tribunal,  
Delhi Bench) in CP(IB) No.598/ND/2023]**

**IN THE MATTER OF:**

**Jagdish Prasad Sharma**

Suspended Management of  
M/s India Offset Printers Private Limited  
Having its address at:  
House No.643, Near Huda Market  
Sector 37, Amarnagar, Faridabad  
Haryana – 121003

**...Appellant**

**Versus**

1. **M/s Silverline Graphics Private Limited**

Having its address at:  
A-140, DDA Shed, Okla Industries Area,  
Phase – II, New Delhi – 110020

**...Respondent No.1**

2. **Vikram Sharma**

IRP of M/s India Offset Printers Private Limited  
Having its address at:  
4A/54, Old Rajinder Nagar,  
New Delhi - 110060

**...Respondent No.2**

**Present:**

**For Appellant** : Mr. Atul Sharma, Advocate

**For Respondent** : Mr. Rachit Mittal, Mr. Parish Mishra, Mr. Kanishk  
Raj, Mr. Adarsh Srivastava and Mr. Abhishek Sinha,  
Advocates for RP

**JUDGMENT**  
**(Hybrid Mode)**

**[Per: Arun Baroka, Member (Technical)]**

This is an appeal filed by the Appellant Mr. Jagdish Prasad Sharma, Suspended Management of M/s India Offset Printers Private Limited filed under Section 61 of the Insolvency and Bankruptcy Code, 2016 (IBC), wherein

the Order dated 11.09.2024 passed by the National Company Law Tribunal, Delhi Bench in CP(IB) No.598/ND/2023 against M/s India Offset Printers Private Limited / Corporate Debtor (“CD”) is being challenged. The impugned order admits a petition under Section 9 of IBC 2016, filed by the Respondent/Operational Creditor (“OC”) namely M/s Silverline Graphics Private Limited.

**Submissions of the Appellant / Jagdish Prasad Sharma**

2. It is contended by the Appellant that majority of the invoices relied by the Operational Creditor / Respondent No.1 are for the year 2016-2019. As per these invoices, they were due on the same day. Therefore, limitation period in relation to the said invoices has lapsed. The Adjudicating Authority has relied on Section 19 of the Limitation Act, 1963 and has held that since part payments have been made, a fresh period of limitation starts. Since the Appellant has not acknowledged the debt fresh limitation cannot be stated to run against the alleged debt under Section 19 of the Limitation Act, 1963. It is unclear that the said payments have been made towards the alleged debt as claimed by the Operational Creditor. The promoters of the Operational Creditor and the Corporate Debtor were not restricted to a single isolated transaction - which is supply of goods and its payment - but there were several disputes and commercial transactions between the Operational Creditor, Corporate Debtor and the promoters of both the Operational Creditor and Corporate Debtor.

3. Section 9 petition has been admitted only on the basis of invoices, even though the said invoices were never accepted by the Corporate Debtor and

there was no seal/sign or acknowledgment of the Corporate Debtor Company on the said invoices. There is no evidence to show that goods were actually delivered to the Corporate Debtor as there are no e-way bills, lorry receipts etc. placed on record by the Operational Creditor. Therefore, there is no conclusive proof to show that the goods as claimed by the Operational Creditor were ever delivered to the Corporate Debtor.

4. Also there are several pre-existing disputes between the Operational Creditor, Promoters of the Operational Creditor, Corporate Debtor and the Promoters of the Corporate Debtor. The promoters of the Operational Creditor continue to illegally occupy the land of the Promoters of the Corporate Debtor. A suit is pending in relation to the same before the Hon'ble High Court of Delhi. Adjudicating Authority did not look into this dispute on the grounds that the said dispute is between two individuals.

5. It is also contended that the relations of the Appellant/ Corporate Debtor, the promoters of the Corporate Debtor, the Operational Creditor and the Promoters of the Operational Creditor were long standing. They had entered into multiple commercial transactions. They often used to set off the dues with each other together for these multiple transactions. The alleged debt and default could not have been adjudicated by the Adjudicating Authority only on the point of supply of goods since there are multiple pre-existing disputes.

6. The Adjudicating Authority has not looked into the grounds of the defective demand notice issued by the Operational Creditor making the proceedings itself void *ab-initio* and also the threshold of Section 9 demand notice not being met.

**Submissions of the M/s Silverline Graphics Private Limited / Respondent No 1 /Operational Creditor:**

7. The Operational Creditor is engaged in the trading business of Graphic Consumables, Offset, Flexo, UV Inks, Chemicals, printing material & machinery. It also has a manufacturing unit wherein it undertakes job work for normal & holographic UV transfer coatings for packaging & commercial print. Pursuant to the discussions between the parties, the Operational Creditor supplied printing and other allied material to the Corporate Debtor. Neither the quality nor quantum of material supplied was disputed. Even the reply to the demand notice raises no dispute.

8. The Appellant and the Corporate Debtor had a running account cannot be in dispute. The amount of Rs. 2,41,15,076/- is owed to the OC which is clear and not disputed. The nature of a 'running account' has been considered by the Hon'ble NCLAT to mean that there must be "...'*Debits*' and '*Credits*' entries going on simultaneously or on a regular basis and the balances are struck with some periodicity..." The ledger statement filed reflects part payments by the Operational Creditor to the Corporate Debtor in the 'Credit' column. Further, the Corporate Debtor has in its Reply demonstrated that the account maintained by the parties was a running account. The chart filed by the Corporate Debtor itself reflects continuous payments to the

Operational Creditor, the last part-payment having been made on 02.03.2022. The chart also reflects the part-payments having been made against specific invoices. There can therefore be no doubt that the account maintained between the parties was indeed a 'Running Account'. The Hon'ble NCLAT has held that where statements showing regular credit entries are produced, the limitation would commence from the date of last payment.

9. Further, the Hon'ble Supreme Court has held that invoices "*...at least preceding three years from the date of filing of Section 9 application...*" must be considered for the purposes of limitation. The Corporate Debtor has in its chart admitted that a payment was made by it to the Operational Creditor against an invoice dated 29.10.2021; thus, even from this perspective, the application is within limitation.

10. The invoices pursuant to which the debts are due from the Corporate Debtor to the Operational Creditor itself provide to interest @ 24%. It is a settled position of law that the 'debt' includes interest, where the invoice provides for interest.

11. Certain debts have been incurred by the Corporate Debtor during the Section 10A period. The total debt which fell due during the 10A period is only INR 2,21,062/-, whereas the total debt due is INR 2,41,15,076/-. Therefore, even excluding the 10A period, the debt due exceeds the threshold limit. Additionally, when default was committed prior to section 10A IBC, application shall not be barred.

12. The assertion of a pre-existing dispute is incorrect. The legal notice relied on by the Corporate Debtor is neither addressed to the Operational Creditor nor relates to the subject matter of the invoices which are the basis of the Application. The issue in the legal notice is w.r.t. to some rent agreement - to which Operational Creditor is not a party. Further, the record of default refers to the pendency of a suit to which the Operational Creditor is not a party. There cannot be said to be any 'pre-existing dispute' in the present case. For the purpose of Section 9 IBC, a 'pre-existing dispute' has to be between the Operational Creditor and Corporate Debtor, not between their promoters/directors/shareholders. The promoters/directors/shareholders of the Operational Creditor and Corporate Debtor are not the Operational Creditor or Corporate Debtor before this Hon'ble Tribunal. This distinction has to be maintained. Therefore, any dispute between the promoters/directors/shareholders of the Operational Creditor or Corporate Debtor is outside the scope of Section 9 IBC, when Operational Creditor and Corporate Debtor are separate corporate legal entities different from its promoters/directors/shareholders. A pre-existing dispute has to relate to the debt which is the subject matter of the application. The purported dispute does not relate to the subject matter of the present proceedings. Therefore, there is no merit in the CD's submissions.

13. In the facts and circumstances, it is prayed that there is no merit in the CD's submissions and the appeal may be dismissed.

## **Appraisal**

14. This appeal by Mr. Jagdish Prasad Sharma (suspended Management) arises from the order of the Adjudicating Authority admitting the Section 9 application filed by M/s Silverline Graphics Private Limited / Respondent No.1 / Operational Creditor (OC) against M/s India Offset Printers Private Limited / Corporate Debtor (CD). The Corporate Debtor has challenged the said order, primarily on grounds of pre-existing disputes, non-existence of debt and limitation.

15. Heard the counsels and perused material on record.

16. Basis the material on record and submissions, following issues emerge:

- whether there is a pre-existing dispute.
- whether the transactions are being under running account
- whether the demand is barred by Limitation Act, 1963.

17. All the issues are inter-twined and being dealt together.

18. The Appellant contends that there is a pre-existing dispute between the parties. The pre-existing dispute relates to the rental arrangement and dispute in settlement of the rent between the Appellant and the Respondent – which is not directly between the CD and the OC but through their Promoters. It is contended by the Corporate Debtor that Promoters of the Respondent are the tenants of the Promoters of the Corporate Debtors and goods supplied by them were being adjusted against the rent which they were liable to pay to the Promoter of Corporate Debtor. When the Promoter of the

Respondent stopped paying the rent multiple litigants spurred between the parties and present petition was one of those litigations. The Respondent per contra claims that under Section 9 of the IBC a pre-existing dispute has to be between Respondent No.1 and the Corporate Debtor and not between their Promoters / Directors/ Shareholders. Any dispute between the Promoters / Directors / Shareholders of the Respondent No.1 or Corporate Debtor is outside the scope of Section 9 of the IBC as both Respondent No.1 and Corporate Debtor are separate corporate legal entities different from their Promoters / Directors / Shareholders. Furthermore, the pre-existing dispute has to relate to the debt which is the subject matter of the application. The purported dispute does not relate to the subject matter of the present proceeding.

19. The issue of pre-existing disputes has been analysed by the Adjudicating Authority at para 9 in the Impugned Order:

“.....

While analyzing the present facts in the light of said definition under Section 5(21), it is observed that the Operational Creditor is engaged in the trading business of Graphic Consumables, Offset, Flexo, UV Inks, Chemicals, printing material & machinery and also possess manufacturing unit wherein it undertakes job work for normal & holographic UV transfer coatings for packaging & commercial print. The Corporate Debtor approached the Operational Creditor for the purchase of printing and other allied materials. The Operational Creditor supplied material/goods to the Corporate Debtor vide various VAT/GST taxed invoices from the period of February, 2016 to November, 2021. It is observed that the Corporate Debtor has neither disputed the receipt of goods nor the receipt of invoices rather acknowledged the same by counter-signing the said invoices. Further, the Corporate Debtor has made several part-payments to the Operational Creditor from 2017 to 2022 in regard to the invoices

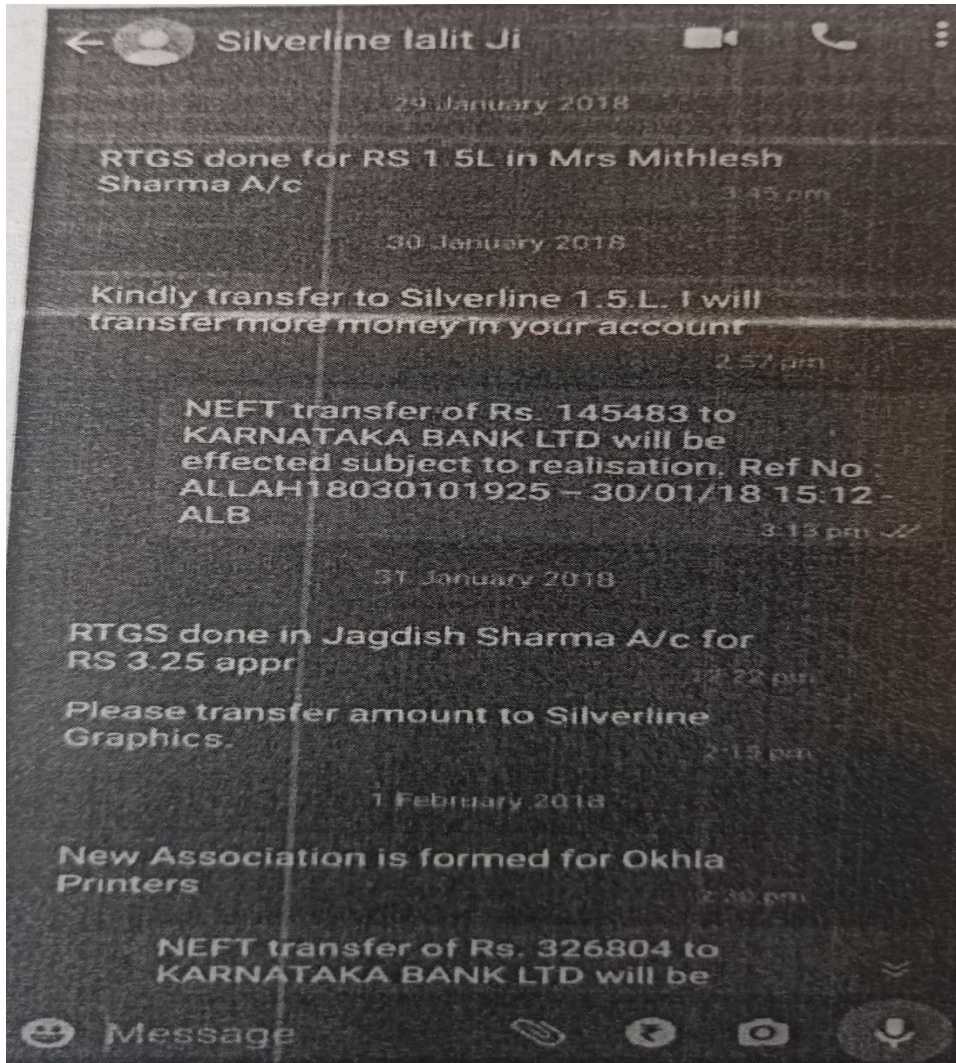


so raised. The last part-payment was made on 02.03.2022, which reflects the 'acknowledgement of debt' on the part of the Corporate Debtor. Furthermore, on the consideration of the transactional invoices, as annexed by the Operational Creditor, and placed before us, we are of the view that there had been a transaction between the Operational Creditor and the Corporate Debtor and that the Operational Creditor has supplied goods to the Corporate Debtor and therefore, is claiming the payment in respect of the invoices so raised. Hence, this Adjudicating Authority is inclined towards believing that the debt claimed by the petitioner for provision of pharmaceutical products comes under the purview of 'Operational Debt' within the meaning of Section 5(21) of the Code.”

20. The above finding of the Adjudicating Authority rejecting the existence of pre-existing dispute has not looked into the real nature of transactions between the two entities. For finding the existence or otherwise of a pre-existing dispute in this case, we now first look into the real nature of transactions basis the materials on record. It is contended by the Corporate Debtor that the payment made to the extent of Rs.4.75 lakhs has not been accounted for. On this, the Adjudicating Authority has concluded as follows:

“Further the Corporate Debtor contends that the Operational Creditor had failed to adjust the payment of Rs.4.75 lacs paid by the promoter of the Operational Creditor as rent amount, however, it is observed that such payment of Rs.4.75 lacs was made in individual capacity and not in respect of payment of the operational debt.”

21. With respect to above transaction the Corporate Debtor had enclosed the transcript in the WhatsApp placed at page 1305 of the Appeal Paper Book with explanation given at para 27 page 1304 of the Appeal Paper Book:



“27. It is submitted that Promoters of petitioners themselves 1<sup>st</sup> paid rent of Rs. 4.75 Lakh to Corporate Debtor, and in order to embezzle/laundry this amount, arm twisted Promoters of corporate debtor to adjust this amount in Petitioner companies' account. Beside above telephonic conversation wherein money is asked to be returned, screenshots attached leave no iota is (of) doubt that Lalit Mohan Bhagat (NESL name), Promoter of petitioner, made payment to erstwhile director of Corporate Debtor Mithlesh Sharma and present director of Corporate Debtor Jagdish Prasad Sharma, and asked them to return same in account of petitioner company and this amount of Rs. 4.75 lakh if adjusted from principal claimed of Rs. 103.38 lakhs brings down the principal amount to less than the threshold of Rs. 1 crore. Below is screenshot along with transcript attached as Annexure - R8 at Page No. 76.”

TRANSCRIPT OF THE PHONE CALL BETWEEN MR.LALIT MOHAN BHAGAT AND  
MR. JAGDISH PRASAD SHARMA (ENGLISH VERSION)

(Call ringing - Mr. Jagdish Prasad Sharma is calling Mr. Lalit Mohan Bhagat)

1. Lalit Mohan Bhagat: Pandit Ji, how are you?  
*A. Jagdish Prasad Sharma: I'm fine, I'm fine.*
2. Lalit Mohan Bhagat: Okay, I've prepared two RTGS transactions of around 4.45 lakhs.  
*B. Jagdish Prasad Sharma: Alright.*
3. Lalit Mohan Bhagat: So, I'll make one today around 3.15 lacs and most likely balance tomorrow. Please see that you return it.  
*C. Jagdish Prasad Sharma: Okay.*
4. Lalit Mohan Bhagat: And secondly, Jagdish, balance have increased around 8 to 10 lakhs in three months.  
*D. Jagdish Prasad Sharma: Okay.*
5. Lalit Mohan Bhagat: How will you do it?  
*E. Jagdish Prasad Sharma: We will do it Sir, we will.*
6. Lalit Mohan Bhagat: No. It's very important. I can't bear this burden myself, neither can you. So, You must find a way to deal with it.  
*F. Jagdish Prasad Sharma: I've told you something, you're not agreeing. So, what should I do now?*
7. Lalit Mohan Bhagat: No, no, I'm not liking what you're saying. I don't like your idea either. How will things work out?  
*G. Jagdish Prasad Sharma: Why don't you just take 40 lakhs now and leave it?*
8. Lalit Mohan Bhagat: Hmm...?  
*H. Jagdish Prasad Sharma: I'll give you 40 lakhs right now.*
9. Lalit Mohan Bhagat: Yes, I...  
*I. Jagdish Prasad Sharma: Okay?, Then I'll sell it to someone else.*
10. Lalit Mohan Bhagat: Why are you giving 40 lakhs? How much money is left?  
*J. Jagdish Prasad Sharma: Oh sir, what's left? What if it doesn't sell, what will you get?*
11. Lalit Mohan Bhagat: I'm saying the same thing, let's talk. It's not like I'll take 40 lakhs and you will sell it to someone else.  
*K. Jagdish Prasad Sharma: No, tell me, should I not save my house?*
12. Lalit Mohan Bhagat: When did I say that? I'm with you on this.  
*L. Jagdish Prasad Sharma: You are talking in a manner as if you feel like I am running away from Okhla.*
13. Lalit Mohan Bhagat: What's this about you leaving Okhla?  
*M. Jagdish Prasad Sharma: You are talking in a manner as if you feel like I am running away from Okhla, If more 40 lakhs will be left, do you think I will leave Okhla for that?*
14. Lalit Mohan Bhagat: At least talk comfortably with me. I'm trying hard to sort you out.  
*N. Jagdish Prasad Sharma: No, you're trying to complicate things.*
15. Lalit Mohan Bhagat: How am I trying to complicate things?  
*O. Jagdish Prasad Sharma: You're trying to complicate the work.*
16. Lalit Mohan Bhagat: No, I'm trying very hard to sort you out  
*P. Jagdish Prasad Sharma: Either you take it, my factory is selling for 4.50 crores.*
17. Lalit Mohan Bhagat: Pandit Ji, let's sit and talk. I've been asking for time from you for the past 10 days.  
*Q. Jagdish Prasad Sharma: Do you want to buy it for 4.50 crores or not? Tell me this first.*
18. Lalit Mohan Bhagat: No, I don't want to buy it for 4.50 crores.  
*R. Jagdish Prasad Sharma: Alright, then vacate it, I'll give you 40 lakhs right now.*
19. Lalit Mohan Bhagat: No, I won't take 40 lakhs, I'll take all my money.  
*S. Jagdish Prasad Sharma: Alright, no problem, we'll see later.*
20. Lalit Mohan Bhagat: Okay.

22. Just a bare perusal of the transcripts discloses the real nature of transactions. Firstly, it points out to the dispute which is not just between the Promoters but is very much inter-mingled with the two corporate entities.

Also, when we deduct Rs.4.75 lakhs from the principal amount of Rs.103.38 lakhs, the threshold limit will not be met, as it brings down the outstanding below Rs. 1 crore and the petition itself will not be maintainable. In the backdrop of the chat transcript as noted earlier, we find that this is a manufactured Section 9 petition.

23. It is to be noted that this dispute is also reflected in the information utility which is at page 67-68 of the Appeal Paper Book. Default is recorded in the information utility i.e. NeSL by promoter of OC i.e. Lalit Mohan Bhagat and not the OC. Also the Corporate Debtor had disputed the default on 11.10.2023, as is reflected in the status of the Information Utility (NeSL).

**NeSL** NATIONAL E-GOVERNANCE SERVICES LIMITED  
India's First Information Utility

**Record of Financial Information - Form C**

Submission Details			
Unique Debt Identifier	AAIPB9267C_6440	Submission ID	1
Submitted by	LALIT MOHAN BHAGAT	Submitted Date & Time	07/10/2023 15:57:37
Submission Type	Default	Information as on	07/10/2023

Authentication Status				
Party Name	Relationship	Userld	Status	Date and Time of Authenticaton
INDIA OFFSET PRINTERS PRIVATE LIMITED	debtor	3177231	DISPUTED	11/10/2023 15:52:18
<p>Reason For Dispute : No such debt existed , Pendency of suit/arbitration proceedings , Pre-existing Dispute , Remarks - ndia Offset is not liable to pay any amount to Lalit Mohan Bhagat. The PAN of the debtor is AAIPB9267C as per our records, and we are not liable to pay any amount to a person with PAN no. AAIPB9267C.</p> <p>Lalit Mohan Bhagat &amp; his son Naman Bhagat (M/s Sun Graphics) are in illegal possession of our property at X-36, Okhla, Phase-II, Delhi-110020. They continuously default on rent &amp; refused to vacate, initially agreeing to purchase the property at a lower value but later defaulting on that agreement.</p> <p>There's pending litigation in Delhi High Court (Case No. CS(Comm.)-825/2022) regarding mutual dealings between the parties.</p> <p>Lalit Mohan Bhagat and his son have threatened India Offset with unnecessary litigation, extorting money, and enjoying illegal possession of our property.</p> <p>The NESL filing is done to commit perjury, and we dispute its accuracy. It should not be considered an admission of debt or default. If Lalit Mohan Bhagat fails to acknowledge the dispute, he would be falsifying the record</p>				

Submitter Information			
Name	LALIT MOHAN BHAGAT	UIN (PAN)	AAIPB9267C
Relationship	creditor	DOI / DOB	02/01/1961
Mobile No.	9xxxxxxx1	Email ID	*****@silverline4.com

24. The prevailing dispute between the parties is also noted from the proceedings of Hon'ble Delhi High Court in CS (Comm.) No.825 of 2022, which was filed by the Petitioner/Appellant. From the material or record in the Appeal Paper Book, it is contended by the Corporate Debtor that the Operational Creditor and the Promoters of Operational Creditors are occupying the property of the Corporate Debtor and promoters of Corporate Debtor as a tenant and the goods supplied by the Operational Creditors were being adjusted against the rent. And they were liable to pay rent to Promoter of the Corporate Debtor. When they stopped paying rent, multiple litigations were filed between the parties and the present petition is one of those litigations.

25. Thus, in the conspectus of the case, issue of the pre-existing dispute cannot be put to a strait jacket as there is a complex nature of transactions when the Demand Notice was issued. We thus find that there is a pre-existing dispute between the Promoters inter-mingled with the two legal entities and is not a patently feeble argument or an assertion of fact unsupported by evidence, rather it is an actual dispute requiring adjudication. The Hon'ble Supreme Court in the matter of ***Mobilox Innovations Private Limited Vs. Kirusa Software Private Limited in Civil Appeal No. 9405 of 2017*** has mandated that such an application needs to be dismissed under Section 9(5)(ii)(d). The relevant para is at 40 as under:

“....

40. 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.”

26. Under these conditions we find that there is a pre-existing dispute between the parties and Section 9 petition is not maintainable. There is sufficient material on record to suggest that there is a pre-existing dispute and Section 9 petition is not maintainable, even then the other additional grounds raised by the Appellant - with respect to limitation and the account being running account or not - are being delved in subsequent paragraphs to unearth the real nature of transactions between the two parties.

27. The issue of running account has been dealt in by the Adjudicating Authority in para 12 which is reproduced as follows:

“....

12. Additionally, the Corporate Debtor had also contended that the invoices are raised from the year 2016 till 2021, and the due date mentioned on the invoice is same as the date of the invoice and the present petition has been filed on 21.09.2023, therefore, some of the invoices have become time barred. In this regard, it is observed that the Operational Creditor had maintained a running account with regard to the payments received by the Corporate Debtor. The term "same date" as the due date merely signifies that the debt has become due from that date and the fact that the due date mentioned on the invoice is the "same date" as of the date of the invoice does not rule out the possibility of the maintenance of the running account between the parties. Further, considering the pattern of the

payments made by the Corporate Debtor, the nature of transaction appears to be that of running account only. Further, as per the records, it is observed that the Corporate Debtor had continuously made part-payments to the Operational Creditor in relation to the invoices raised by the Operational Creditor. The part-payments were made from 2017 and the last part-payment was made on 02.03.2022 and by virtue of Section 19 of the Limitation Act, 1963, a fresh period of limitation shall be computed from each date of payment. The latest part-payment being made on 02.03.2022 extended the limitation for further 3 years, hence, the claim of the Operational Creditor in respect of the invoices raised, is not time-barred. Additionally, the bank account statement of the Operational Creditor clearly discloses all the part-payments received by the Operational Creditor from the Corporate Debtor. Such bank account statements also discloses that the remaining amount out of the claim of the Operational Creditor has not yet been received in the account of the Operational Creditor from the Corporate Debtor. Furthermore, there is no proof attached by the Corporate Debtor which shows that there had been complete payment of 'Operational Debt' to the Operational Creditor.”

28. On the issue of limitation even the Adjudicating Authority has concluded that “The latest part-payment being made on 02.03.2022 extended the limitation for further 3 years, hence, the claim of the Operational Creditor in respect of the invoices raised, is not time-barred.” This conclusion of Adjudicating Authority doesn’t provide any benefit to the Appellant and the maintainability of the petition cannot be questioned on the grounds of limitation.

29. Adjudicating Authority has concluded that:

“The term "same date" as the due date merely signifies that the debt has become due from that date and the fact that the due date mentioned on the invoice is the "same date" as of the date of the invoice does not rule out the possibility of the maintenance of the running account between the parties. Further, considering the pattern of the payments made by the Corporate Debtor, the nature of transaction appears to be that of running account only.”.

30. If conclusions have to be drawn on the basis of the nature and pattern of the payments - then we need to go deep into the payments made by both parties through Corporate Debtor, Promoters of Corporate Debtor, Operational Creditor, Promoters of Operational Creditor - which have been having multiple business transactions, some of which relate to the supply of goods - and some of which is related to the payment of rent for the premises occupied by the Operational Creditor. Some transactions also relate to payment through RTGS and without any purpose and some have been returned in cash. This indicates complex nature of transactions between Operational Creditor, Promoters of Operational Creditor, Corporate Debtor and Promoters of Corporate Debtor. If the nature of transactions has to be gone into, as indicated by the Adjudicating Authority, then we cannot conclude it to be a running account for the supply of goods and its payments alone. It has many more transactions not only between the Corporate Debtor and the Operational Creditor but also between the Promoters. The argument of the Operational Creditor that both are separate legal entities, and the transactions other than these legal entities is not tenable in such a situation. The veil of Corporate Debtor has to be pierced in such a situation. Therefore, the Order of the Adjudicating Authority, which is more on the basis of presumptions, doesn't stand the scrutiny basis materials on record.

31. Basis above analysis we find that there are multiple transactions which were happening in the purported running account - some of which relate to the supply of goods and their payment from two legal corporate entities, but



others not directly related to the supply of goods and services. The dispute is apparent from the material on record with respect to the arrangement for use of the premises on rent. There are disputes, which are between the Operational Creditor and its Promoters and Corporate Debtor and its Promoters. The transactions between the Corporate Debtor and the Operational Creditor cannot be seen in isolation and we need to go beyond the corporate veil. The disputes between all of them cannot be brushed aside. Therefore, we conclude that there is a pre-existing dispute between the Corporate Debtor and the Operational Creditor.

**Order:**

32. The Appeal is allowed. Accordingly, the Section 9 proceedings against the Corporate Debtor are set aside. No orders as to costs.

**[Justice Ashok Bhushan]  
Chairperson**

**[Barun Mitra]  
Member (Technical)**

**[Arun Baroka]  
Member (Technical)**

**New Delhi.  
January 22, 2025.**  
*pawan*