

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

Company Appeal (AT) (Insolvency) No. 796 of 2024

(Arising out of the Impugned Order dated 10.04.2024 passed by the 'Adjudicating Authority' (National Company Law Tribunal, Ahmedabad Bench, Ahmedabad in CP (IB)/153/(AHM)/2021]

IN THE MATTER OF:

Subhash N Dawar
A-1102, Ashirwad Park
Near Anuvrat Dwar, City Light
Magdalla, SVR Coll
Surat – 395007, Gujarat

...Appellant
Suspended Management

Versus

1. Nanjing Maohj Information
& Technology Co. Ltd.
Building, C No. 4
Gupinggang Gulou District
Nanjing Jiangsu Province, P.R. China

...Respondent No.1/
Operational Creditor

2. Mr. Mahendra Prasad Jindal
Interim Resolution Professional
M/s Alliance Embroidery
Machine Private Limited
B-501 Safal Pegasus, 100 ft. Road
Prahalad Nagar, Nr Auda Garden
Ahmedabad – 380015, Gujarat

...Respondent No.2 (IRP)

Present:

For Appellant : Mr. Dhiren R. Dave and Mr. Subhash N. Dawar,
Advocates

For Respondent : None

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

[Per: Arun Baroka, Member (Technical)]

This is an Appeal under Section 61 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as the "IBC Code") against the Impugned Order dated 10.04.2024 (hereinafter referred to as "Impugned Order") under

Section 9 of the IBC, passed by the Hon'ble National Company Law Tribunal (hereinafter referred to as "Adjudicating Authority"), Ahmedabad Bench, Ahmedabad in [(IB)/153/(AHM)/2021].

2. Nanjing Maohj Information & Technology Co. Ltd.- NMIT - the Operational Creditor had supplied some machineries to the M/s Alliance Embroidery Machine Private Limited through Chirag Impex Limited located at Hong Kong. Corporate Debtor - M/s Alliance Embroidery did not make payment except for some initial advance which was provided to the Operational Creditor.

3. After follow up, the Operational Creditor sent a demand notice to Chirag impex and also to the Corporate Debtor. Since there was no reply to the demand notice by the Corporate Debtor, the Operational Creditor initiated Section 9 proceedings against the Corporate Debtor, which was admitted by the Adjudicating Authority on 10/4/2024. This appeal is against the admission of Section 9 proceedings against the Corporate Debtor. The total debt is about rupees 5.59 crores.

4. Heard the counsel of the Appellant and perused all documents placed on record.

Submissions of the Appellant

5. The Appellant is the suspended management of the Corporate Debtor in the matter of C.P.(LB)/153(AHM)2021. It is contended that the original Petitioner i.e. Nanjing Maohj Information & Technology Co. Ltd.- NMIT has supplied goods to one M/s. Chirag Impex (HK) Ltd and from M/s. Chirag Impex (HR) Ltd Corporate Debtor imported goods to India.

6. Goods were delivered to M/s Chirag Impex (HK) Ltd, and the demand notice was also issued to M/s. Chirag Impex (HK) Ltd and not to the Corporate Debtor. Corporate Debtor and Chirag Impex (HK) Ltd are having separate legal entities and further Adjudicating Authority has also observed in Para 34 that “During the hearing, we have asked about the relationship between the Corporate Debtor and Chirag Impex HK Ltd., it was explained by the Learned Counsel for the Respondent that there is a relationship of father and son between the Corporate Debtor and Mr. Chirag of Chirag Impex HK Ltd.”. Since Corporate Debtor and Chirag Impex (HK) Ltd are two separate legal entities, therefore Operational Creditor cannot demand amount outstanding of one company from the other company. Even if Father and Son are common director in Chirag Impex (HK) Ltd and Corporate Debtor company, for outstanding of one company Chirag Impex (HK) Ltd another company Corporate Debtor cannot be put to CIRP.

7. In case of Import of Goods basic and fundamental evidence of delivery of goods is Bill of Entry. Bill of Entry also includes name of the sender and Invoice. Operational Creditor has neither produced copy of Bill of Entry for the goods supplied and/or delivered by them nor denied Bill of Entry by which Corporate Debtor has received goods in India. In IBC no company can be entered into CIRP without proof of delivery of Goods and Proof of Delivery of Invoice.

8. Adjudicating Authority erred in considering the fact that the bill of lading presented by the operational creditor further corroborates that M/s.

Chirag Impex (HK) Ltd is the confirming party for payment and both the Corporate Debtor and M/s. Chirag Impex (HK) Ltd. are distinct legal entities.

9. In the given case admittedly, the amount claimed is from M/s. Chirag Impex (HK) Ltd. Demand Notice was also addressed and issued to them. Operational Creditor have been following up for Payment with M/s. Chirag Impex (HK) Ltd only and not with the Corporate Debtor. Email from applicant to M/s. Chirag Impex (HK) Ltd is on record. Reply to the email of applicant is also from M/s. Chirag Impex (HK) Ltd only and it is Mr. Chirag, Director of the Chirag Impex (HK) Ltd who has replied that his father (Director of Corporate Debtor) is trying hard.

10. Adjudicating Authority has observed in the Impugned order that “As regards the various Bills of Entries attached by the Respondent, it appears that in order to evade the Customs Duty on the goods imported certain malpractices were adopted by the Corporate Debtor”. This itself prove that if in any matter Adjudicating Authority feels that there are issues like different invoices, different claims and counter claims, malpractices etc. such matter cannot be admitted under IBC. Adjudicating Authority has admittedly stated in the judgement that some malpractices were adopted by the Corporate Debtor and in spite of such observations, admitted the petition contrary to the judgement of Innovative. Adjudicating Authority acknowledges the submissions of malpractices regarding evasion of customs duty, under invoicing etc., which suggests a need for an inquiry rather than admission under the Insolvency and Bankruptcy Code (IBC) contrary to the established

law that any such matters require inquiry and investigation and cannot be entertained under IBC.

11. Hon'ble Apex court has time and again decided such matters and few of the Land Mark judgments relied by Appellant are in the following paragraphs.

12. Firstly, it relies on **Mobilox Innovations Pvt. Ltd Vs. Kirusa Software Pvt. Ltd. (2017) ibclaw.in 01 SC.**

“45. Going by the aforesaid test of “existence of a dispute”, it is clear that without going into the merits of the dispute, the Appellant has raised a plausible contention requiring further investigation which is not a patently feeble legal argument or an assertion of facts unsupported by evidence. The defence is not spurious, mere bluster, plainly frivolous or vexatious. A dispute does truly exist in fact between the parties, which may or may not ultimately succeed, and the Appellate Tribunal was wholly incorrect in characterizing the defence as vague, got-up and motivated to evade liability.”

13. Appellant also relies on **S S Engineers Vs Hindustan Petroleum Corporation Ltd (2022) ibclaw.in.92 SC**

“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.”

14. Finally, it relies on **Transmission Corporation of Andhra Pradesh Ltd. v. Equipment Conductors and Cables Ltd.** which is extracted as below:

“45. The expression “existence” has been understood as follows: “Shorter Oxford English Dictionary gives the following meaning of the word ‘existence’:

(a) Reality, as opp. to appearance.

(b) The fact or state of existing; actual possession of being. Continued being as a living creature, life, esp. under adverse conditions.

Something that exists; an entity, a being. All that exists. (P. 894, Oxford English Dictionary)

XXXXXXXX

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.”

15. Even impugned order of Adjudicating Authority in para 33 says that “As regards the various Bills of Entries attached by the Respondent, it appears that in order to evade the Custom Duty on the goods imported certain malpractices were adopted by the Corporate Debtor.” If that is the observation of Adjudicating Authority itself, it is established law that such matters cannot be admitted under IBC as it requires summary inquiry. It is established law that under Adjudicating Authority is not supposed to consider any matter which requires inquiry and investigation.

16. Considering the facts with full of disputes, no proof of delivery of invoice & Goods, no bill of entry by the applicant for supply of goods, and Adjudicating Authority recording that manipulations have been done, under invoicing and all read with Land Mark Judgements referred to above, appeal deserves to be allowed and Corporate Debtor should be put freed from demur of CIRP.

Submissions of the Respondent:

17. The debt originates from the purchase of Yuemei laser bridge and computerized embroidery machines (hereinafter referred to as the “said Goods”) by the Corporate Debtor from the Operational Creditor.

18. The Corporate Debtor approached the Operational Creditor for purchase of said Goods on credit and represented itself to be an organisation of a good financial standing who made timely payments. Relying on the representation and assurance of the Corporate Debtor the Operational Creditor started supplying said Goods to the Corporate Debtor on credit and the Operational Creditor and the Corporate Debtor entered into **sales contracts** listed hereunder detailing terms and conditions of purchase:

Sl. No.	Sales contract Bearing No.	Date
a)	MC20190604	04.06.2019
b)	MC20190606	06.06.2019
c)	MC20190612	12.06.2019
d)	MC20190706	06.07.2019
e)	MC20190726	26.07.2019

19. The Operational creditor had supplied 13 numbers of machines in total through 8 Bill of Lading to the Corporate Debtor and raised 5 invoices totalling to USD 773,696.90.

20. Pursuant to the sales contracts, the Operational Creditor made available the said Goods that were duly inspected by the Corporate Debtor and the Corporate Debtor issued **‘Confirmation letters of quality and payment’** vide letters dated 04.06.2019, 20.06.2019, 08.07.2019, 17.08.2019 and 26.08.2019 in favour of Operational Creditor against corresponding sales contract. By way of said Confirmation letter of quality and payment the Corporate Debtor, inter-alia, acknowledged the quality of the said Goods being in line with agreed standards, issued no-objection in respect with quality of said Goods to be supplied by Operational Creditor and guaranteed to make full payment on or before the due date to the Operational Creditors designated bank account. Upon such acknowledgement and guarantee by way of Confirmation letter of quality and payment by Corporate Debtor raised following **invoices for supply** of the said Goods:

Sl. No.	Invoice No.	Date	Amount
1.	MHJ2019000376E	19.06.2019	165,345.60
2.	MHJ201900416E	21.06.2019	145,191.30
3.	MHJ2019000440E	01.07.2019	135,760.00
4.	MHJ2019000498E	09.08.2019	178,600.00
5.	MHJ2019000548E	26.08.2019	148,800.00
Total Invoice Amount (USD)			773,696.90

21. Pursuant thereof, the said Goods were delivered to the Corporate Debtor as per the following ***bills of Lading*** and accepted by the Corporate Debtor without protest and demur:

Sl. No.	Bill of Lading No	Date
1.	HDMUNXAY5004502	22.06.2019
2.	HDMUNXAY5004546	24.06.2019
3.	HDMUNXAY5004638	08.07.2019
4.	HDMUNXAY5004289	14.08.2019
5.	HDMUNXAY5006316	28.08.2019

22. However, despite accepting delivery of the said Goods without any protest and demur, Corporate Debtor failed to make payment as per the agreed payment schedule.

23. Thereafter, the Operational Creditor has been following up with the Corporate Debtor for overdue payments including vide two separate emails dated 17.12.2019 whereby the Operational Creditor, interalia, requested for payment of their overdue payment of USD 420,436.00.

24. In response to the Operational Creditor's emails dated 17.12.2019 the Corporate Debtor vide its email dated 17.12.2019, inter-alia, assured that the Operational Creditor's payments are 100% (hundred percent) secure and requested time as Corporate Debtor was making arrangement for release of overdue payments.

25. That despite continuous reminders and follow-up, the Corporate Debtor neither responded to the Operational Creditor nor released any payment in terms of the Sales Contracts, which constrained the Operational

Creditor to issue a demand notice dated 31.03.2020 through its advocates under Section 8(1) of the Insolvency and Bankruptcy Code, 2016 (as amended) at the email addresses of the Corporate Debtor seeking payment of the outstanding debt. The said demand notice was delivered at the respective email addresses of the Corporate Debtor vide email dated 31.03.2020 of the advocate of the Operational Creditor. It is submitted that despite receipt of the demand notice by way email by Corporate Debtor, the Operational Creditor neither received any reply / notice of dispute to the statutory demand notice within the prescribed period under the IB Code, 2016 nor received any payment from Corporate Debtor.

26. The outstanding debt of USD 747,796.90 (United States Dollar Seven Hundred Forty-Seven Thousand Seven Hundred Ninety Six and Ninety Cents) is due and Payable by the Corporate Debtor to the Operational Creditor.

27. Therefore, it was apparent that the Corporate Debtor neither has the intention nor has the ability to repay the outstanding operational debt of the Operational Creditor and are malafidely avoiding to make payment of the legitimate dues of the Operational Creditor.

28. The Corporate Debtor has asserted without any material evidence on record that the Operational Creditor routed different machineries, other than the ones ordered under sales contracts with the Operational Creditor, through one M/s Chirag Impex HK Ltd. and Corporate Debtor purchased such machines from the said M/s Chirag Impex HK Ltd. instead of through the Operational Creditor. In order to support its false assertions, the

Corporate Debtor has even placed on record some bill of lading, invoices and bill of entries proclaiming that the machines imported by the Corporate Debtor were imported through M/s Chirag Impex HK Ltd. and not through the “Operational Creditor”.

29. The fictitious story which has been concocted by the Corporate Debtor in its reply is belied by the fact that the bill of lading relied by the Corporate Debtor in its said reply clearly reads Operational Creditor as Shipper and Corporate Debtor as Consignee, inferring that the goods/machines supplied under the admitted bill of lading are supplied by the Operational Creditor to the Corporate Debtor. None of the Bill of Ladings, as produced by the Corporate Debtor, even remotely support the claim of the Corporate Debtor that the machines/said goods were supplied by M/s Chirag Impex HK Ltd. to the Corporate Debtor. It is also submitted that under Bill of Ladings, placed on record by the Operational Creditor in the petition confirms M/s Chirag Impex HK Ltd. as notifying party. This is for shipper to inform of the supply, transit and delivery of the goods under the noted Bill of Lading. Such delivery status apart from consignor and consignee is even shared with the party specifically requested for as notifying party in the bill of lading.

30. It is pertinent to note that M/s Chirag Impex HK Ltd. is acting as a shell company of the Corporate Debtor. Mr. Chirag, being the son of one of the directors and the purported authorised signatory of the Corporate Debtor, who has affirmed the said reply of Mr. Subhansh N Dawar, and has been corresponding with the Operational Creditor from the email address chiraghongkong@hotmail.com. Further, Chirag Impex HK Ltd. is a related

entity of the Corporate Debtor and the Corporate Debtor is the shareholder cum founding member of Chirag Impex HK Ltd. Both Corporate Debtor and Chirag Impex HK Ltd. have common directors and shareholders. It is pertinent to note that the Corporate Debtor on one hand is operating Chirag Impex HK Ltd. as a shell company out of Hong Kong and as can be made out is created with a view to evade customs duty on the goods and/or products that the Corporate Debtor has been importing into Indian territories and on the other hand the Corporate Debtor is misusing its shell company to evade its liability towards admitted debt by relying on the fabricated invoices to make profit out of its own wrong.

31. Further, the Corporate Debtor has relied upon and placed on record some invoices purporting that the said invoices are raised for supply of the machines by M/s Chirag Impex HK Ltd. while as made out in the preceding paragraph none of the machines, contrary to the claim of the Corporate Debtor, have been supplied by the M/s Chirag Impex HK Ltd. to the Corporate Debtor. Also, it can be made out that the invoices and cost of the machines as reflected in the invoices, as placed on record by the Corporate Debtor, are under-priced where none of such machines can be purchased at price as low as to be made out from the invoices placed on record by the Corporate Debtor and is a clear cut case of under-pricing and it appears that it may have been done with an intention to evade customs duty.

32. The demand notice issued by the lawyer of the Operational Creditor is under instructions of the Operational Creditor and delivered by email dated 31st March, 2020 to the then known and published email addresses of the

Corporate Debtor. The said Demand Notice was delivered to the email addresses operated by the Corporate Debtor as there was no delivery failure receipt received by the lawyer of the Operational Creditor. It is pertinent to note that the email addressed used by the lawyer of the Operational Creditor being:

- o chiraghongkong@gmail.com;
- o alliancemachine@drdcs.net;
- o alliancemachine@gmail.com,

where alliancemachine@gmail.com was the email address then listed with the MCA at the point of time.

33. And the email address chiraghongkong@gmail.com, as noted in the preceding paragraph, is the email address of the shell/related company of the Corporate Debtor and is operated by the Corporate Debtor and son of one of the Directors' of the Corporate Debtor and the person who is purported to be authorised signatory of the Corporate Debtor under the said Reply. The Corporate Debtor has disputed receipt of the Demand Notice and has alleged that none of the email addresses, where the Demand Notice was delivered, belongs to the Corporate Debtor, whereas, the records reflect contrary to the claim of the Corporate Debtor and the MCA records in all eventuality have been updated only post receipt of the Demand Notice and in the year 2020 i.e. after 31st March, 2020.

34. However, despite receipt of the notice the Corporate Debtor has neither acted upon the notice nor made any payments to discharge its liabilities and rather is making false representations under its said Reply, inter-alia, with the view to cast doubts.

35. The Bill of Lading in the original petition reads Operational Creditor as shipper and Corporate Debtor as consignee and M/s. Chirag Impex HK Limited as notifying party. It is respectfully submitted that the M/s. Chirag Impex HK Limited is the related entity and Shell Company of the Corporate Debtor and Mr. Chirag is the son of Mr. Shubhansh N. Dawar, who is the Director and authorized signatory of the Corporate Debtor, who has executed the reply for and on behalf of the Corporate Debtor and the said Mr. Shubhansh N. Dawar is even the director of the M/s. Chirag Impex H K Limited.

36. Corporate Debtor in its reply has alleged that M/s. Chirag Impex HK Limited is the agent of the Operational Creditor, whereas it can be established that M/s. Chirag Impex HK Limited and the Corporate Debtor have common directors and M/s. Chirag Impex HK Limited is a Shell Company of Corporate Debtor. From bare perusal of memorandum of association of Chirag Impex HK Ltd. it can be established that Corporate Debtor is the shareholder and founding member of Chirag Impex HK Ltd. *It is submitted that the Sales Contracts were executed by the Corporate Debtor, invoices were also raised to the Corporate Debtor and machines/goods were also delivered by the Operational Creditor to the Corporate Debtor and hence, the Demand Notice issued to the Corporate Debtor.* The Corporate Debtor has concocted the entire story and made false assertions without even referring to the documents and emails on record with a view to evade its liability towards payment of legitimate dues.

37. M/s Chirag Impex HK Ltd. is shell/related company of the Corporate Debtor and the alleged transaction vide the invoices placed on record by the Corporate Debtor are nothing but fabricated invoices, where the value of the machines are highly undervalued and seems to have been prepared in order to evade liability of customs duty by the Corporate Debtor. It is pertinent to note that the bill of lading placed on record by the Corporate Debtor along with its reply clearly note Operational Creditor as consignor of the goods and the Corporate Debtor as consignee under all the bill of lading and there is no mention of M/s Chirag Impex HK Ltd. in any of the bill of lading where it can be made out that the machines were exported by M/s Chirag Impex HK Ltd. from Hong Kong as being alleged by the Corporate Debtor. But the documents submitted by the Corporate Debtor do not prove that the Corporate Debtor purchased goods from its own shell company M/s Chirag Impex HK Ltd. from Hong Kong as being alleged by the Corporate Debtor. To the contrary the invoices are fabricated as the description on the packaging list and the invoice do not match. Further the value of the machines as invoiced is highly under-priced and above all the bill of lading, the authentic documents certifying the supply of the machines, note the Operational Creditor as consignor and the Corporate Debtor as consignee. It is pertinent to note that bill of entry issued by customs house is issued under wilful misrepresentation of the Corporate Debtor, as the only contrary detail noted there are the details of the fabricated invoices made up by the Corporate Debtor, clearly in order to evade customs duty, defraud Indian Authorities and cause huge loss to exchequer.

38. Bill of entry are the documents filed by the Corporate Debtor/Importer with the customs department during the customs clearance procedure. The bill of entry is a self-declaration document that is filed by the Corporate Debtor itself or through its customs agent. Closer look into the bill of entry filed by the Corporate Debtor reflects that the bill of entry are 13 in number equal to the number of machines imported by the Corporate Debtor from the Operational Creditor. While the machines mentioned under the bill of entry are actually imported by Corporate Debtor under 8 bills of lading and under 5 invoices issued by the Corporate Debtor. However, the Corporate Debtor, apart from 8 bills of lading from the Operational Creditor filed with the application has mentioned additional 5 bills of lading all reflecting the Operational Creditor as the consigner of goods while the Corporate Debtor has instead filed invoices issued by its related entity that is Chirag Impex towards these supplies.

39. The invoices made part of the reply of the Corporate Debtor before the Adjudicating Authority from its related entity that is Chirag Impex Limited are highly under-priced and are apparently filed with the malafide intent to evade customs duty. The cost of computerized embroidery machine imported by the Corporate Debtor is ranging between USD 33039.32 to USD 74400.00 whereas the similar machines are invoiced between USD 24700 to USD 26240 by the related entity of the Corporate Debtor and disclosed under the bill of entry. Yuemei laser bridge costs USD 165345.60 while the Corporate Debtor under the bill of entry and the invoice from its related entity has priced the same machine at USD 64780 - not even half of the then prevailing price of

the machine. The Corporate Debtor while has evaded tax liabilities and has caused a huge loss to the exchequer with its misrepresentation and now is using such made up documents to support its moonshine defense in these proceedings

40. The Corporate Debtor vide letter dated 1/5/2018 had announced to the Corporate Debtor that Chirag Impex Limited is to act as a third party payer which clearly reveals that the Corporate Debtor is the buyer and just to facilitate the payment, the corporate debtor had asked Chirag Impex Limited to make the payment.

41. As per the submission of the Corporate Debtor, the machines were supplied to it by Chirag Impex. If that be so, then Chirag Impex would have issued Bill of Lading. In that case, the Corporate Debtor would not be in possession of the Bill of Lading with the Operational Creditor as Shipper/Consignor of the goods.

42. Assuming that Chirag Impex has purchased the goods from the Petitioner and supplied the goods to the Corporate Debtor, then the Respondent should have placed on record the purchase orders, invoices, sales contract, letter of confirmation entered between the Operational Creditor and Chirag Impex. It is submitted that the Operational Creditor has not entered into any Agreement or Contracts with Chirag Impex which is a related entity of the Corporate Debtor.

43. The Corporate Debtor has made advance payment of USD 25900 in advance as per the terms and conditions of the sales contracts i.e. Sales

contract bearing no. MC20190604 dated 04/06/2019, Sales Contract bearing no. MC20190606 dated 06/06/2019 and Sales Contract bearing no. MC20190612 dated 12/06/2019. It is submitted that the outstanding amount after deducting US Dollar 25900 is US Dollar 747696.90. Moreover, inspection of the machines / Goods the Corporate Debtor issued "Confirmation letter of quality and payment" vide letters dated 04.06.2019, 20.06.2019, 08.07.2019, 14.08.2019 and 26.08.2019 in favour of Operational Creditor against corresponding Sales Contract, the hard copies of the said letters were sent by the Corporate Debtor to the Operational Creditor through international courier dated 02.09.2019 i.e. post receipt of the machines by the Corporate Debtor.

Appraisal:

44. The case involves the Operational Creditor, Nanjing Maohj Information & Technology Co. Ltd. (NMIT), based in China, and the Corporate Debtor, represented by Sh. Subhash N Dawar. The case revolves around the supply of goods by NMIT to M/s. Chirag Impex (HK) Ltd., with the Corporate Debtor importing these goods to India. The Operational Creditor claims an outstanding debt of USD 773,696.90 for the supply of Yuemei laser bridges and computerized embroidery machines to the Corporate Debtor based on signed sales contracts. The Corporate Debtor disputed the claim, asserting they purchased the machines from a separate company, Chirag Impex (HK) Ltd., and presented invoices and bills of lading from Chirag Impex. The Operational Creditor initiated insolvency proceedings against the Corporate Debtor under Section 7 of the Insolvency and Bankruptcy Code, 2016 (IBC).

45. The crux of the matter is whether in the facts of this case the Corporate Debtor can be held liable for the outstanding dues claimed by the Operational Creditor, despite the goods being delivered to and demand notices issued to M/s. Chirag Impex (HK) Ltd.

46. Upon careful consideration of the arguments of both parties, the following points are noted:

46.1. Documented Agreements: Signed sales contracts clearly outline the purchase agreement between the Operational creditor and the Corporate Debtor, all of which have been noted by the Adjudicating Authority.

46.2. Independent Verification: Bills of Lading, official shipping documents issued by a neutral third party, show the Operational creditor- NMIT as the shipper and the Corporate Debtor as the recipient of the machines. This independent verification directly contradicts the Corporate debtor's claims of a different supplier.

46.3. Corporate Debtor's Acknowledgement: The Corporate debtor's signed "Confirmation Letters of Quality and Payment" demonstrate their satisfaction with the received machines, further solidifying the legitimacy of the transaction and delivery of goods to it.

46.4. Bills of Entry and Proof of Delivery: The Corporate Debtor's reliance on the absence of specific Bills of Entry from the Operational Creditor is insufficient to dismiss the claim. The provided Bills of Entry indicate that the Corporate Debtor was the recipient of the goods, thereby establishing a

connection to the transaction. Moreover, other documents like sales contract, bill of lading, invoices and Confirmation Letters of Quality and Payment are more than sufficient to prove the claims of the Operational Creditor.

46.5. Existence of a Business Relationship: It is evident that the Corporate Debtor had a business relationship with M/s. Chirag Impex (HK) Ltd., and there was a chain of transactions involving the import of goods from the Operational Creditor as is evidenced from above documents. The relevant email between the parties as below also clinches the issue in favour of the Operational Creditor:

"From: chirag impex <chiraghongkong@hotmail.com>
To: Michaelhu@sunflowerscf.com <michaelhu@sunflowercf.com>
CC: <luy@samples.cn> wanghh <wanghh@samples.cn>
christyc <christyc@chinasunflower.com>
Sent: 2019-12-17 02:08
Subject: Re: repayment

Mr. Micheal

Yes, Mr. Varun called us today.
Pls do not worry about your payment.
Your payment is 100% safe and secure.
Only time is waiting.
My father is very much worried for your payment and arranging.
He is trying lending money from his friend as well as customers payments.
The market position not supporting so taking time.
Otherwise your payment is 100% safe.
Sorry if not reply sometime.
Only
Chirag."

46.6. Unresponsive Corporate Debtor: Despite repeated reminders and a formal demand notice under Section 8(1) of the Insolvency and Bankruptcy Code, 2016 sent to known email addresses with no delivery failures, the Corporate debtor had failed to respond or dispute the invoices within the legal timeframe. The so called dispute being raised by the Appellant at this stage

is based on the remarks of the Adjudicating Authority which are not at all pre-existing dispute.

46.7. Shell Company Allegations: The Corporate Debtor's accusations of fabricated invoices and a shell company are unsubstantiated. The sales contract, bill of lading, invoices and Confirmation Letters of Quality and Payment remain strong evidence of the legitimate transaction.

46.8. Legal Responsibility and Familial Links: While the Corporate Debtor and M/s. Chirag Impex (HK) Ltd. are separate legal entities, the familial ties between their directors and the transactional flow of goods imply a deeper operational linkage. Both Corporate Debtor and Chirag Impex HK Ltd. have common directors and shareholders. Mr. Chirag, being the son of one of the directors and the purported authorised signatory of the Corporate Debtor, who has affirmed the said reply of Mr. Subhansh N Dawar, has been corresponding with the Operational Creditor from the email address chiraghongkong@hotmail.com. Further, Chirag Impex HK Ltd. is a related entity of the Corporate Debtor and the Corporate Debtor is the shareholder cum founding member of Chirag Impex HK Ltd. Both Corporate Debtor and Chirag Impex HK Ltd. have common directors and shareholders. The link between the Corporate Debtor's director's son and Chirag Impex emails further undermines the Corporate Debtor's claims and suggests potential attempts to obfuscate the truth. This linkage cannot be ignored in assessing liability. The Corporate Debtor's claims of a separate company, Chirag Impex, being responsible lack any credible evidence. The Operational creditor's documented trail directly contradicts this assertion.

46.9. Disputed Claims and Investigation: The alleged malpractices concerning customs duty and under-invoicing, while serious, do not negate the Operational Creditor's claim. These issues are not being addressed by us and need be looked into separately through appropriate investigative channels.

46.10. Landmark Judgements and Legal Precedents: The Appellant cites landmark Supreme Court judgements to support their arguments. Appellant claims that the evidence clearly demonstrates a disputed debt with another company, and the CIRP petition should be dismissed. The reliance on the so called dispute is being quoted from the orders of the Adjudicating Authority, who had mentioned that: *"As regards the various Bills of Entries attached by the Respondent, it appears that in order to evade the Custom Duty on the goods imported certain malpractices were adopted by the Corporate Debtor."* This is being used to apply the referenced judgements, including ***Mobilox Innovations Pvt. Ltd Vs. Kirusa Software Pvt. Ltd. and S S Engineers Vs Hindustan Petroleum Corporation Ltd.***, emphasize the need for clear, undisputed debts for initiating CIRP. The facts of this case are totally different. The relevant extracts of the ***Mobilox Innovations (supra)*** judgement are reproduced herein for distinguishing this case:

"Once the operational creditor has filed an application, which was 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 was a record of dispute in the information utility. It was 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

was pending between the parties. Therefore, all that the adjudicating Authority was to see at this stage was whether there was a plausible contention which requires further investigation and that the dispute was not a patently feeble legal argument or an assertion of fact unsupported by evidence. It was important to separate the grain from the chaff and to reject a spurious defence which was mere bluster. However, in doing so, the Court did not need to be satisfied that the defence was likely to succeed. The Court did not at this stage examine the merits of the dispute. So long as a dispute truly exists in fact and was not spurious, hypothetical or illusory, the Adjudicating Authority has to reject the application.”

In this case the comments of the Adjudicating Authority on under invoicing that, in order to evade the Custom Duty on the goods imported certain malpractices were adopted by the Corporate Debtor. Is being relied upon by the Appellant. But there is no pre-existing dispute in the present case. Therefore, The Corporate Debtor doesn't get any support from the above judgement. For the same reasons the judgment relating to **S S Engineers (supra)** as also **Transmission Corporation of Andhra Pradesh Ltd. (supra)** will be of no avail to the Appellant.

47. The crux of the dispute lies in the validity of the debt and who truly owes the money. As noted above the Operational Creditor presents a compelling case with documented evidence: signed sales contracts, bills of lading listing them as the shipper and the Corporate Debtor as the receiver, confirmation letters from the Corporate Debtor acknowledging receipt and satisfaction with the machines, and a formal demand notice sent but with no response from the Appellant. The creditor's documented trail, particularly the bills of lading and confirmation letters, appears strong. However, the Corporate Debtor's allegations of Chirag Impex involvement and undervalued

invoices tries to raise suspicion but are not convincing at all to treat them as a case of dispute.

48. The documents on record which has clinched the matter in favour of the Appellant are summarized hereunder:

Sr. No.	Letter of Confirmation of Quality and Payment issued by Corporate Debtor	Invoices issued by Operational Creditor	Bill of Lading	Amount (USD)
1.	Letter dated 04.06.2019 issued under contract No. MC20190604 Alliance confirming supply of 1 quantity of machine	Invoice No. MHJ201900 0376E dated 19.06.2019	HDMUNX AY500450 2 dated 22.06.2019 confirming supply of 1 Machine	165,345.60
2.	Letter dated 20.06.2019 issued under contract No. MC20190606 Alliance confirming supply of 4 quantity of machine	Invoice No. MHJ201900 0416E dated 21.06.2019	HDMUNX AY5004546A, AY5004546B, AY5004546C, AY5004546D) dated 24.06.2019 confirming supply of 1 Machine under each Bill of Lading totaling to 4 Machines	145,191.30
3.	Letter dated 08.07.2019 issued under contract No. MC20190612 Alliance confirming supply of 2 quantity of machine	Invoice No. MHJ201900 0440E dated 01.07.2019	HDMUNX AY5004638 dated 08.07.2019 confirming supply of 2 Machines	135,760.00
4.	Letter dated 14.08.2019 issued under contract No. MC20190706 Alliance confirming supply of 4 quantity of machine	Invoice No. MHJ201900 0498E dated 09.08.2019	HDMUNX AY5004289 dated 14.08.2019 confirming supply of 4 Machines	178,600.00
5.	Letter dated 26.08.2019 issued	Invoice No. MHJ201900	HDMUNX AY5006316	148,800.00

	under contract No. MC20190726 Alliance confirming supply of 2 quantity of machines	0548E dated 26.08.2019	dated 28.08.2019 confirming supply of 2 Machines	
--	--	------------------------	--	--

49. Any issues related to alleged malpractices and customs duty evasion could be investigated separately through the appropriate legal channels and we are not passing any orders onto that issue.

Conclusion:

50. The evidence overwhelmingly supports the Operational Creditor's claim for repayment from the Corporate Debtor. The Corporate Debtor has a clear legal obligation to fulfil their financial commitment as outlined in the signed contracts and documented transactions. The Adjudicating Authority's orders to admit the Corporate Debtor into the Corporate Insolvency Resolution Process (CIRP) is upheld, and the necessary steps under the Insolvency and Bankruptcy Code (IBC) will proceed accordingly and the appeal is dismissed. No orders as to costs.

[Justice Ashok Bhushan]
Chairperson

[Barun Mitra]
Member (Technical)

[Arun Baroka]
Member (Technical)

New Delhi
24th May, 2024

pks