

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

Company Appeal (AT)(Insolvency) No. 525 of 2023

[Arising out of order dated 11.05.2022 passed by the Adjudicating Authority, National Company Law Tribunal, New Delhi in CP(IB) No. 108(PB)/2022]

IN THE MATTER OF:

**Raju Jagtap,
Suspended Director of
Insteel Engineers Private Limited,
804/805/806, The Ambience Court,
Opp. RTO Office, Sector 19D,
Vashi, Navi Mumbai – 400703**

...Appellant

Versus

**Jayesh Steel Pvt. Ltd.
801, Maple Trade Centre,
Nr. Surdhara Circle, Sai Hospital Road,
Thaltej, Ahmedabad - 380054**

...Respondent No.1

**Insteel Engineers Private Limited
Through Mr. Piyush Kishanlal Jani,
Interim Resolution Professional,
804/805/806, The Ambience Court,
Opp. RTO Office, Sector 19D,
Vashi, Navi Mumbai – 400703**

...Respondent No.2

Present:

For Appellant: Mr. Abhijeet Sinha, Mr. Chirag Bhaskar, MR. Akash Chatterjee, Mr. Vishishth Singh, Advocates.

**For Respondents: Mr. Varun Sharma, Advocate for R-1
Mr. Santosh Kumar, Advocate for R-2**

J U D G M E N T

[Per: Barun Mitra, Member (Technical)]

The present appeal filed under Section 61 of Insolvency and Bankruptcy Code, 2016 (“**IBC**” in short) by the Appellant arises out of the Order dated 12.04.2023 (hereinafter referred to as “**Impugned Order**”) passed by the Adjudicating Authority (National Company Law Tribunal, Mumbai Bench-IV) in CP (IB) No.840/MB-IV/2021. By the impugned order, the Adjudicating Authority has admitted the application under Section 9 of the IBC filed by Jayesh Steel Private Limited–Respondent No.1 and initiated Corporate Insolvency Resolution Process (“**CIRP**” in short) of the Corporate Debtor-M/s Insteel Engineers Private Limited. Aggrieved by this impugned order, the present appeal has been filed by the suspended Director of the Corporate Debtor.

2. Putting briefly the facts of the case, a business relationship had been entered into between the Corporate Debtor and the Operational Creditor–Respondent No.1 purportedly on the basis of an oral agreement. Pursuant to this arrangement, a purchase order had been issued by the Corporate Debtor on 08.05.2019 by which certain material was to be supplied by the Operational Creditor. Apropos of the purchase order, goods were supplied by the Operational Creditor and delivered to a company named M/s Anwasha Engineering and Projects Limited (“**Anwasha**” in short). As against invoices raised aggregating an amount of Rs. 2,07,09,859/-, the Operational Creditor received payment of only Rs. 70,61,000/-. Since the outstanding debt of Rs.1,37,14,859/- remained unpaid, the Operational Creditor issued a demand notice to the Corporate Debtor under Section 8 of IBC on 22.02.2021. The Corporate Debtor replied to the

demand notice on 09.03.2021. The debt having continued to remain unpaid, a Section 9 application was filed by the Operational Creditor before the Adjudicating Authority. The Adjudicating Authority on 12.04.2023 allowed the Section 9 application and admitted the Corporate Debtor into the rigours of CIRP. Aggrieved by the impugned order, this appeal has been preferred by the Appellant.

3. The Learned Counsel for the Appellant submitted that in terms of the business arrangement between them and the Operational Creditor, goods were to be supplied by the Operational Creditor to Anwesha for which the payments were to be made directly by Anwesha to the Operational Creditor. It was further submitted that as per understanding arrived between the Corporate Debtor and Anwesha on 05.11.2019, all payments against invoices raised by the Operational Creditor in respect of purchase order dated 08.05.2019 were to be directly made by Anwesha. Contending that this arrangement of Anwesha to directly make the payments had come to be accepted by the Operational Creditor, it was pointed out that there were e-mails exchanged between them to this effect. Further, this arrangement is substantiated by the fact that the Operational Creditor had received RTGS payments from Anwesha including the receipt of certain postdated cheques. Anwesha on its part had also kept the Corporate Debtor apprised of this payment arrangement. In this backdrop, it was asserted by the Learned Counsel for the Appellant that the Adjudicating Authority had committed the mistake of not factorizing the modified business arrangement between the three parties.

4. It was stoutly contended by the Learned Counsel for the Appellant that the Corporate Debtor at no stage had accepted any liability to make payments to the Operational Creditor and thus cannot be held responsible for having defaulted in repayment of operational debt due to the Operational Creditor.

5. It was also pointed out by the Learned Counsel for the Appellant that prior to the issue of demand notice, the Corporate Debtor had informed the Operational Creditor on 09.02.2021 that in view of the changed payment terms, there was no liability devolving on them to make any payments to the Operational Creditor. Further, by the same communication, the Operational Creditor was kept apprised of the fact that Anwesha had been admitted into insolvency and the Operational Creditor could consider submitting their claims qua Anwesha to the Interim Resolution Professional. Submission was also made that when the Operational Creditor had already been acknowledging and receiving payments from Anwesha directly without any demur or objection, they could not claim any entitlement to place a demand on the Corporate Debtor to clear their outstanding dues once Anwesha got admitted into CIRP. This communication of 09.02.2021 signified pre-existing dispute having been raised prior to the issue of demand notice. It was asserted that Operational Creditor was using IBC as a recovery forum which militates against the objectives of the IBC.

6. Assailing the impugned order, it is contended that the Adjudicating Authority instead of looking into aspects of debt and default and pre-existing disputes, travelled beyond the summary jurisdiction of IBC in finding out whether the Corporate Debtor or Anwesha is the principal debtor which issue fell within the realm of a civil dispute.

7. The Learned Counsel for the Respondent refuting the submissions made by the Appellant contended that the business relations between the Operational Creditor and the Corporate Debtor was to be determined in terms of the oral agreement entered between them. According to this arrangement, the purchase order was to be placed by the Corporate Debtor against which goods were to be supplied by the Operational Creditor to Anwasha; payment invoices were to be raised against the Corporate Debtor and payments were to be remitted by the Corporate Debtor. It was also asserted that the purchase order clearly indicated that the buyer of the goods was the Corporate Debtor and hence it was the liability of the Corporate Debtor to clear the payments.

8. It was further added that as regards the agreement between the Corporate Debtor and the Anwasha with regard to payments to be made by Anwasha to the Operational Creditor, this agreement was done unilaterally by them and the Operational Creditor was not a party to it. Even though the Corporate Debtor had remitted part payment to the Operational Creditor in a piece-meal manner through Anwasha, the Adjudicating Authority has rightly held that the Corporate Debtor was the principal debtor qua the Operational Creditor. Moreover, the Corporate Debtor not having raised any dispute with regard to the quality, quantity and supply of the goods, there is no incidence of pre-existing dispute. Thus, the defence of pre-existing dispute raised by the Corporate Debtor in their reply to the demand notice of the Operational Creditor by relying on their communication of 09.02.2021 was merely a ploy to evade the liability of making payments due to the Operational Creditor.

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

10. At the very outset, we must point out that the Appellant adverted our attention to an infirmity in Para 4 of the impugned order wherein the Adjudicating Authority noted that arguments of both the parties have been heard, while in the order sheet of 07.03.2023 wherein the matter was reserved for orders, it is noted that the Operational Creditor was not represented during the final hearing. Prima-facie, we find substance in the contention of the Appellant that there is a glaring contradiction between the order reserving the judgement and the final orders as pronounced, we are letting this go on possible grounds of oversight/inadvertence and proceed with making our analysis and findings.

11. The short point for our consideration is whether any operational debt qua the Corporate Debtor is due and payable and if there has been a default in the payment thereof and whether there is any pre-existing dispute between the parties. This examination would be in consonance with the test which has been laid down by the Hon'ble Supreme Court in ***Mobilox Innovations (P) Ltd. v. Kirusa Software (P) Ltd. (2018) 1 SCC 353*** ('Mobilox' in short) which is as reproduced below:-

“34. Therefore, the adjudicating authority, when examining an application under Section 9 of the Act will have to determine:

(i) Whether there is an “operational debt” as defined exceeding Rs. 1 lakh? (See Section 4 of the Act)

(ii) Whether the documentary evidence furnished with the application shows that the aforesaid debt is due and payable and has not yet been paid? And

(iii) Whether there is existence of a dispute between the parties or the record of the pendency of a suit or arbitration proceeding filed before the receipt of the demand notice of the unpaid operational debt in relation to such dispute?

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

12. It is the case of the Appellant that there was no liability on their part to discharge the obligation of making payments to the Operational Creditor for their supply of goods to Anwasha in view of the meeting held on 05.11.2019 by which Anwasha had agreed to make direct payment to the Operational Creditor against supply of materials. While admitting that the purchase order was issued by them, it was claimed that the Operational Creditor was well aware that the payments against the said purchase order was to be made by Anwasha. There was an agreed understanding between Operational Creditor and Anwasha that though invoices were raised in the name of the Corporate Debtor, the liability will be that of Anwasha and payments in respect of these invoices will be made by them directly to the Operational Creditor. It is the contention of the Appellant that at no stage in their business relationship had ever admitted debt due from them to the Operational Creditor.

13. It is the counter contention of the Operational Creditor that the purchase order of 08.05.2019 makes it abundantly clear that in terms of the oral agreement between the Corporate Debtor and the Operational Creditor, the

payments for supply of materials were to be made by the Corporate Debtor after receiving corresponding payments from Anwasha. The buyer of the material was the Corporate Debtor and Anwasha was only a consignee. Hence, the Corporate Debtor continued to remain the debtor to Respondent No.1-Operational Creditor. Moreover, the Operational Creditor was not privy to the agreement/minutes of the meeting dated 05.11.2019 which has been contended by the Corporate Debtor to be the modified arrangement by which Anwasha was to pay directly to the Operational Creditor. As there was no specific consent of the Operational Creditor to the agreement of 05.11.2019, this arrangement cannot be treated as novation of contract. In any case, the minutes of the meeting of 05.11.2019, was communicated to the Operational Creditor for the first time on 09.02.2021. The Corporate Debtor without the consent of the Operational Creditor could not transfer its obligation to Anwasha. Furthermore, mere transfer of amounts by Anwasha to the Operational Creditor cannot tantamount to novation of the contract.

14. Coming to the above-cited minutes of meeting of 05.11.2019 which finds place at page 61 of Appeal Paper Book (“**APB**” in short), we notice that it remains undisputed that the Operational Creditor was not a signatory to the proceedings of the meeting. To that extent, we have no hesitation in concluding that as on 05.11.2019, the arrangement between the Corporate Debtor and Anwasha with respect to modalities of payment does not reveal any specific consent from the Operational Creditor thereto.

15. However, what has also not escaped our attention is that soon after the meeting of 05.11.2019, there has been an exchange of correspondence on

09.11.2019 between Anwesha and the Operational Creditor, whereby the arrangement worked out on 05.11.2019 was duly communicated to the Operational Creditor, wherein Anwesha undertook to release all the payments directly. The said email is reproduced below: -

“Akshay Mhatre

From: Dipak Sarkar <dipak.sarkar@anwesha.co.in>
Sent: Monday, September 9, 2019 2:32 PM
To: ‘Jayesh Steel’
Cc: Amit Dalal; Asitava Roy, akshaym@insteelengg.com; rpjagtap@insteelengg.com

Subject: RE: PAYMENT EXTREMELY OVERDUE

Dear Jayesh Bhai,

It is true that we have made delay in releasing the payment. We will complete Anwesha account within this week. We will release payment against InnSteel account from next week. Time & again, I have informed you that we have received the request letter from InnSteel for releasing payment directly to you, so you need not to follow with InnSteel.

Regards,

Dipak Kumar Sarkar | Jt. Managing Director
Anwesha Engineering & Projects Limited.”

The above correspondence which outlines the new mechanism/arrangement of payment was not challenged or questioned by the Operational Creditor as there are no supporting documents to that effect which have been placed on record by the Operational Creditor.

16. More significantly from the sequence of facts, post the above email communication of 09.11.2019, we find that even in their conduct, the Operational Creditor acquiesced to this arrangement of receiving payments from Anwesha without objections. We also notice from the bank statements that Anwesha had made payments to the Operational Creditor by RTGS on

24.10.2019, 20.02.2020, 27.05.2020, 21.07.2020, 26.08.2020 as placed at pages 66-70 of APB. These bank statements are a conclusive proof that payments were being received directly from Anwasha and not from the Corporate Debtor. Further, the Operational Creditor in their email dated 15.09.2020 addressed to the Anwasha enclosing the ledger account of the Corporate Debtor-Appellant thereby acknowledged receipt of payments from Anwasha as seen at page 71 of APB. There is also a letter dated 16.09.2020 which shows that Anwasha had requested Operational Creditor to inform the Corporate Debtor that it had received the payments so that Corporate Debtor could square off their accounts. It will be useful to extract the email hereunder: -

“Akshay Mhatre

*From: Dipak Sarkar <dipaksarkar@anweshagroup.com>
Sent: Wednesday, September 16, 2020 10:29 AM
To: Jayesh Steel; Dipak Sarkar
Cc: Raju Jagtap; 'Akshay Mhatre', Bhavesh Shah
Subject: RE: LEDGER ACCOUNT*

Dear Jayeshbhai,

Please send the letter to Insteel about the payment to be released by Anwasha directly to Jayesh Steel, so that Insteel can do necessary set off in their book of accounts.

*Regards,
Dipak Kumar Sarkar
Anwasha Engineering & Projects Limited”*

17. We also notice that the Operational Creditor had sent communication directly to Anwasha on 23.07.2019 even before the agreement of 05.09.2019 notifying them to clear outstanding payments as placed at page 57 of APB. This was followed by similar reminders sent subsequently on 18.11.2019, 22.11.2019, 26.11.2019, 29.11.2019 and 04.12.2019, which have been placed before this Tribunal by the Appellant on affidavit in rejoinder. Though these

reminders were not before the Adjudicating Authority, we are taking cognizance of these reminder letters since these are in continuum to the communication of 23.07.2019 which was before the Adjudicating Authority. That none of these emails seeking payment from Anwasha are found to be endorsed to the Corporate Debtor validates that for purposes of payment, the Operational Creditor had by their conduct been adhering to an arrangement of dealing only with Anwasha for receiving payments.

18. We further notice that the Operational Creditor has admitted to have collected three post-dated cheques from Anwasha for the entire payments which were later replaced with new post-dated cheques. The issue of post-dated cheques by Anwasha to secure the entire outstanding payment which had been willingly collected by the Operational Creditor also shows that the understanding arrived at the meeting of 05.11.2019 between the Corporate Debtor and Anwasha had been implicitly and explicitly accepted by the Operational Creditor.

19. More significantly, the Operational Creditor has failed to produce any document on record to establish that the Corporate Debtor had admitted the alleged debt due. No averments were made or any proof provided by the Operational Creditor to show that any request was placed by them with Corporate Debtor for reconciliation of accounts or with regard to outstanding payments which is sufficient basis to believe that Operational Creditor was in touch only with Anwasha and not the Corporate Debtor for their payments. It is also quite evident from facts on record that only after the Appellant informed the Operational Creditor that Anwasha had been admitted into CIRP that the Operational Creditor issued a demand notice to them for the first time on

22.02.2021. Prior to 22.02.2021, we do not find any correspondence from the Operational Creditor to the Corporate Debtor asking for payments to be made.

20. It is further the case of the Appellant-Corporate Debtor that in their letter dated 09.02.2021 which was sent to the Operational Creditor before the issue of demand notice, it was clearly mentioned therein that Anwesha was to pay directly to the Operational Creditor and that there was no liability on the Corporate Debtor to clear the payments. It was also stressed that this letter clearly recorded and reiterated the understanding of novation of the agreement between the parties. Quite apart from that, the conduct of the Operational Creditor also shows that they were fully aware that there was novation of the contract.

21. The Learned Counsel for the Respondent No.1 has contended that the argument of novation of contract does not hold good by relying on the judgment of the Hon'ble Supreme Court in ***Kapilaben and Ors., v. Ashok Kumar Jayantilal Sheth*** in ***CA No.10683-86 of 2014*** which has held that a party to a contract cannot assign its obligations or liabilities without the consent of the other party. While we entirely agree to this proposition of law, we must add that this judgement also observed that whether or not an assignee can seek specific performance would depend upon the construction of contract in each case. The present facts of the case are distinguishable in that it arises out of IBC proceedings and is not a case of contingent contracts under Section 31 of the Indian Contract Act and hence this judgement does not come to the assistance of the Operational Creditor.

22. At this juncture, we wish to refer to the ***Mobilox*** judgement, wherein the Hon'ble Apex Court while interpreting Sections 8 and 9 of IBC has laid down the

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guiding principles on how to conclude the existence of disputes between the parties. It may be useful to notice the relevant part of the judgement as reproduced below:

“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.”

23. We notice that in the present facts of the case, the Appellant has not only denied any liability to make any payments to the Operational Creditor but also raised the contentious issue of payment terms arising out of a modified business arrangement in their reply notice. It will be pertinent to take note of the relevant paras of the reply notice which is to the effect:

“March 9, 2021
To,
JAYESH STEEL PRIVATE LIMITED
4th Floor, Pariseema Annexie, Opp. Swagat Building,
C.G. Road, Ahmedabad 380009, Gujarat

Speed Post AD

Also at:
32 Ellora Park, Opp. Jain Temple,

Naranpura, Ahmedabad 380013, Gujarat

Reference: Reply to the Demand Notice ("Reply")

Subject: Demand notice dated February 22, 2021 issued by Jayesh Steel Private Limited demanding payment in respect of alleged unpaid operational debt due from Insteel Engineers Private Limited ("Insteel") under the Insolvency and Bankruptcy Code, 2016 ("Demand Notice")

Sirs,

.....2. At the outset, **it is denied that the Disputed Amount is due and payable** by Insteel Engineers and the demand made in the Notice is devoid of any legal merits. For the specific purpose of addressing the Demand Notice, please note that you do not have any rights whatsoever to initiate action against Insteel Engineers, under the IBC, **due to existence of revised arrangement between Anwesh Engineering & Projects Limited (earlier known as Anwesh Engineering & Projects Limited) ("Anwesh")**, you and Insteel Engineers on the amounts claimed, which has been confirmed by you from time and again.

As such, all allegations and claims made in the Demand Notice unless specifically admitted to, are wrong and frivolous, and hence denied by Insteel Engineers. It is apparent that you have conveniently chosen to be oblivious to the arrangements between the parties. We will draw your attention to some facts in context of your Notice, which will render your claims, submissions and allegations, baseless.

3. Towards the arrangements for a project involving Insteel Engineers, Anwesh and yourself, **Anwesh issued a letter (reference no.AEPL/INSTEEL/FI-99/2019/001) dated November 5, 2019, expressly confirming that it shall be responsible for your payments and such payments shall be made directly to you**, as per minutes of meeting dated November 5, 2019. Infact, the commercials in respect of your materials were discussed and agreed between Anwesh and you, without our any involvement from Insteel Engineers.

Thereafter, **Insteel Engineers has categorically informed you that it is not liable to make any payments to you considering**

that the same shall be released by Anwasha. Please also note that vide letter dated February 9, 2021 by Insteel Engineers, it clarified and reiterated the aforesaid position that Insteel Engineers does not any liability towards Jayesh Steel and the same shall be released by Anwasha. The copy of this email communication is marked hereto as Exhibit 1.

4. **You agreed to the revised understanding and payment terms; and towards this, also collected post-dated cheques and subsequent payments from Anwasha, including the payments on February 20, 2020 and May 27, 2020.** This was confirmed by the Joint Managing Director of Anwasha, through email communication dated September 9, 2019 to you. The copy of this email communication is marked hereto as Exhibit 2.

5. The above **position is confirmed through your ledger confirmation, which clearly provides details of the payments received directly from Anwasha.** The copy of ledger confirmation is marked hereto as Exhibit 3.

6. You have been **following up for the payments directly with Anwasha as per the terms mutually finalised and agreed between Anwasha and you.** Against this, Anwasha has been updating you about the payment status. You never updated or coordinated with Insteel Engineers for the pending payments, amount received and pending from Anwasha. **Your approach of now directly issuing demand notice in Form-3 to Insteel Engineers, is absurd and nothing short of an afterthought an attempted manoeuvre to allege a breach when there exist none.** Your distress clearly betrays the real intention of your Notice.

7. On the basis of the above, it is clearly established that the Demand Notice has been issued on Insteel Engineers, despite Anwasha and you agreeing that the payment responsibility shall be with Anwasha. In terms of the existing and irrefutable set of facts mentioned above, it is axiomatic to state that **Insteel Engineers is under no liability to pay any amount as the Demand Notice and claim made therein against Insteel Engineers is completely fictitious.**

Infact, the issuance of the Notice is with an ulterior motive of wrongfully threatening, pressurising and usurping money from Insteel Engineers in order to unjustly enrich you.

8. The Demand Notice under the IBC does not lie and needs to be withdrawn immediately. The process of law including provisions of the IBC cannot be misused to wrongfully pressurise a party to make any payment. Additionally, for reasons mentioned above, Jayesh Steel is not an operational creditor of Insteel Engineers under the IBC as it does not fall under the definition of "operational creditor".

In view thereof, please note **that the Demand Notice is denied and disputed in toto**. The manner in which the entire issue related to Anwasha has been handled is a clear case of fraud, misappropriation of funds and hand-in-glove situation, considering that you have been Anwasha's direct supplier since long time.

9. We are disappointed to witness that despite the arrangement finalised with Anwasha, you have caused the issuance of the Demand Notice seeking to extort the Disputed Amount by wrongfully pressurizing Insteel Engineers.

In view of the instances mentioned above, we hope that better sense and legal advice will prevail upon you and your clients, in so far as engaging in frivolous correspondence which is little shy of entering the realm of tautology or in initiating any proceedings against us. However, should you choose to proceed with such false and illusory correspondence, make no mistake, the same shall be taken up vociferously by us.....

Yours faithfully,
For Insteel Engineers Private Limited
Authorized Signatory”

(Emphasis supplied)

24. From the reply notice as reproduced in the foregoing paragraph, other available material on record in the APB and after hearing the rival contentions of both the parties, we are of the view that the Adjudicating Authority has failed to take cognizance of the fact that there clearly existed dispute between the two parties anterior to the date of demand notice in respect of the terms and

conditions of their business transactions as also on the liability to discharge the obligations to pay. Moreover, keeping in mind that IBC bestows only summary jurisdiction upon the Adjudicating Authority and this Tribunal, once plausibility of a pre-existing dispute is shown, it is not required of them to make further detailed investigation. What has to be looked into is whether the defence raises a dispute which needs further adjudication by a competent court. It is well settled that in a Section 9 proceeding, the Adjudicating Authority is not to enter into final adjudication with regard to existence of dispute between the parties regarding the operational debt. There was no reason for the Adjudicating Authority in the present case to go under the skin of dispute to unravel who is the principal debtor.

25. We therefore find force in the contention of the Appellant that since they had never accepted any liability to make payments to the Operational Creditor and that given the fact that there was pre-existing dispute surrounding the oral agreement of 08.05.2019 and modified arrangement on 05.09.2019, the Section 9 application ought not to have been admitted by the Adjudicating Authority in terms of the judgment of the Hon'ble Supreme Court in **Mobilox** supra.

26. For the foregoing reasons, we are of the considered opinion that the Adjudicating Authority committed serious error in admitting Section 9 application in the facts of the present case. The Impugned Order dated 12.05.2022 initiating CIRP of the Corporate Debtor and all other orders pursuant to Impugned Order are therefore set aside. The Corporate Debtor is released from the rigours of CIRP and is allowed to function independently through its board of directors with immediate effect. We however add that we are not expressing

any views on the merits of the disputes raised and in the event the Respondent No.1/Operational Creditor is desirous of seeking alternative legal remedy, in the interest of justice, it shall have the liberty to approach the appropriate legal forum as permissible in law. The impugned order had directed the Operational Creditor to deposit Rs.3 lakhs with IRP to meet expenses. However, keeping in view that the impugned order was stayed within fourteen days, we are satisfied that a sum of Rs.1.50 lakhs will suffice for the purpose of nominal fees and actual expenses incurred by the IRP, subject to submission of bills/vouchers. Respondent No.1 shall make these payments within one month from the date of this order, if not deposited already with the IRP. This appeal is allowed with the above observations. No costs.

[Justice Ashok Bhushan]
Chairperson

[Barun Mitra]
Member (Technical)

Place: New Delhi

Date: 26.09.2023

PKM