

National Company Law Appellate Tribunal, New Delhi

COMPANY APPEAL (AT) (Insolvency) No. 695 of 2020

(Arising out of Order dated 20th March, 2020 passed by National Company Law Tribunal, Ahmedabad Bench, Ahmedabad in Company Petition No.- (IB) 656/9/NCLT/AHM/2019)

IN THE MATTER OF:

**M/s. Sumilon Polyester Pvt. Ltd.
(Formerly M/s. Sumilon Polyester Ltd.)
6/121 A-1, Paiki Plot No. 8,
1st Floor, Vairagini Wadi,
Delhi Gate
Surat 395 003**

.....Appellant

Versus

**M/s. Parikh Packaging Pvt. Ltd.
Opp. Rotomac Pens,
Sarkhej Bavla Highway,
Village Moraiya
Taluk Sanand
Ahmedabad 382 213**

....Respondent

**Appellant: Mr. Malak Bhatt and Mr. Rajat Bector, Advocates.
Respondent: Ms. Aastha Mehta and Mr. Vinay Bairagara,
Advocates.**

J U D G E M E N T

[Per; Shreesha Merla, Member (T)]

1. The Operational Creditor, M/s. Sumilon Polyester Private Limited, preferred this Appeal under Section 61 of the Insolvency and Bankruptcy Code, 2016 against the Impugned Order, dated 20.03.2020, passed by the Learned Adjudicating Authority, National Company Law Tribunal, Ahmedabad Bench, in C.P. No. (IB) 656/9/NCLT/AHM/2019. The Adjudicating Authority, while dismissing the Application under Section 9, observed as follows;

“9. On perusal of the records it is found that, in the email (page 86) dated 2nd January, 2018 addressed to the respondent, the petitioner has admittedly

acknowledged the receipt of complaint dated 28.12.2017, agreed to take back the unused material of 9116.4 kgs. On perusal of the records it is also found that both the parties have exchanged number of emails regarding quality of the material, debit note raised on the petitioner by the respondent and rate of interest charged (page 70 – 114). Page No. 95 to the reply is an email addressed to the petitioner by the respondent regarding inconsistent quality of the goods supplied by the petitioner.

10. On perusal of the records it is also found that against the defective material supplied by the petitioner, respondent had issued debit notes.

*11. In the instant application, from the material placed on record by the respondent, it is evident that there **is/are pre-existing dispute** regarding quality of the material supplied by the operational creditor and, therefore, the instant petition is not maintainable.*

12. In view of what is stated herein above, the Adjudicating Authority is of the considered view that the instant application devoid of merit and as such is not maintainable on the very reason that there is/are pre-existing disputes with regard to the quality of goods supplied.

13. In the result, the instant application is dismissed. No order as to cost. However, this will not stand in the way of the Petitioner invoking the appropriate forum seeking to enforce its claim as against the Respondent, as this petition has been dismissed on the issue of maintainability taking into consideration of the provision of IB Code, 2016.

2. The facts in brief are that the Appellant M/s. Sumilon Polyester Private Limited (hereinafter referred to as the 'Operational Creditor'), engaged in the business of supply of CC PET and CC MET-PET materials was supplying 'FILMS' to M/s. Parikh Packaging Private Limited (hereinafter referred to as the 'Corporate Debtor') since several years. During the course of their transactions, in November 2017, the Corporate Debtor raised a 'Dispute' with respect to poor quality of the material supplied. Thereafter another order was placed in the month of September 2018 towards which

consignment, the Operational Creditor pleads that the invoice amount was not paid in totality. The Operational Creditor preferred Section 9 Application before the Adjudicating Authority claiming an amount of Rs. 19,07,560/- stating that there was a balance of Rs. 11,83,255/- 'due and payable' as against invoice dated 04.09.2018, together with an amount of Rs. 5,96,234/- claimed against debit note dated 28.02.2019 and an amount of Rs. 1,28,071/- claimed against debit note dated 08.04.2019, totaling to Rs. 19,07,560/-.

3. Learned Counsel appearing for the Appellant vehemently contended that the Learned Adjudicating Authority had erroneously come to the conclusion that there was a 'Pre-Existing Dispute' on the basis of acknowledgement of receipt of a Complaint dated 28.12.2018 when there was no such Complaint as on that date; that the Complaint with regard to the quality of goods was raised by the Corporate Debtor in December 2018; that emails dated 30.11.2017, 21.12.2017 are with respect to quality of goods supplied in November 2017, which issue was duly resolved between the parties by May 2018 and the same is evidenced by emails dated 09.01.2019 and 10.01.2019; that the last correspondence between the parties with respect to quality of goods was in January 2018 when the Operational Creditor took back the unprocessed and unconverted material due to long standing business relations; that there were no emails exchanged between the parties from January 2018 to January 2019 regarding any 'Dispute'; that the issue was resolved way back in May 2018 and that the Corporate Debtor with the sole intention of avoiding making

payment for the goods supplied against invoice dated 04.09.2018 raised the issue of 'poor quality goods' after a belated period of one year.

4. The Learned Counsel appearing for the Appellant placed reliance on the emails dated 09.01.2019 and 10.01.2019 to substantiate his argument that the issue of quality of goods was resolved in May 2018. He also drew our attention to the ledger accounts for the period 01.04.2017 to 30.04.2019 and relied on the amounts credited on 01.02.2018, 02.02.2018 and on 05.02.2018 amounting to Rs. 87,78,462/-, in support of his contention that the balance amounts with respect to the goods delivered to the Corporate Debtor against the November 2017 invoice were paid subsequently and therefore the 'Dispute' was settled between the parties. Learned Counsel for the Appellant argued that it was only after a substantial period of one year i.e. January 2019, that the Corporate Debtor raised a 'Dispute' regarding supplies made a year ago and that there was absolutely no issue raised with respect to the shipment made in September 2018. It is contended by the Appellant that the Corporate Debtor was re-agitating the matter belatedly and deducted the amounts arbitrarily and that the Learned Adjudicating Authority erroneously recorded that the 'Dispute' pertains to goods supplied in September 2018.

5. Learned Counsel for the Respondent/Corporate Debtor submitted that the contention of the Operational Creditor that the said issue was resolved in the month of January 2018, is factually incorrect and devoid of merits and relied on the emails dated 04.01.2019 and 08.02.2018 in support of their case that the said quality issue was never resolved and that the Adjudicating Authority has rightly given a finding that there was a 'Pre-

Existing Dispute' between the parties. Learned Counsel appearing for the Corporate Debtor submits that it was only an account of substandard material supplied by the Operational Creditor that out of a total amount of Rs. 38,83,168/-, admittedly an amount of Rs. 7,78,501/- was deducted; that the ledger account shows that on 10.12.2018 and on 05.01.2019 this amount of Rs. 31,04,667/- was paid against Invoice No. 810; that the Hon'ble Supreme Court in ***M/s. Innoventive Industries Ltd. V/s. ICICI Bank and Ors. Reported in (2018) 1 SCC 407*** held that '*moment there is an existence of such a dispute, the Operational Creditor gets out of the clutches of the Court*' and hence the Learned Counsel contended that it is the 'existence of dispute' which is important and it cannot be segregated on the basis of any single transaction. Learned Counsel drew our attention to the Reply to the first Demand Notice dated 19.04.2018 and the Reply to the second Demand Notice dated 18.07.2019 in which the Operational Creditor has denied that any amounts were 'due and payable' and that on account of rejection of the substandard material supplied, the Corporate Debtor has also raised debit notes to the tune of Rs. 11.50 Lakhs/- and that a total of 9116.4 Kg of goods was returned on account of poor quality and the same was communicated to the Corporate Debtor vide email dated 28.12.2017. The other amounts claimed by the Corporate Debtor i.e. Rs. 5,96,234/- and Rs. 1,28,071/- were also not payable for the same reason and since the principal amount itself is disputed and not 'due and payable'; the question of payment of interest does not arise.

6. Heard both sides at length.

7. The point that arises for ruminatiion in this Appeal is whether the Learned Adjudicating Authority was right in dismissing the Section 9 Application filed under I&B Code, 2016 based on the ground that there was a 'Pre-Existing Dispute' between the 'Operational Creditor' and the 'Corporate Debtor'.

8. The Operational Creditor in Form V of the Section 9 Application of the code has made a claim in respect of the undermentioned amounts;

*"1. Invoice No. 35125011900810 dated 4.9.2018 amounting to Rs. 38,83,169/- out of which **Rs.11,83,255/-** remains outstanding and payable.*

*2. Debit Note No. 70625011900070 dated 28.2.2019 amounting to **Rs. 5,96,234/-** which remains outstanding and payable.*

*3. Debit Note No. 70625012000002 dated 8.4.2019 amounting to **Rs. 1,28,071/-** which remains outstanding and payable.*

*Total outstanding amount = **Rs. 19,07,560/-**"*

9. The Hon'ble Supreme Court in a catena of Judgements has laid down the Principle that in an Application under Section 9, the Corporate Debtor can point out any 'Pre-Existing Dispute' raised prior to the issuance of Demand Notice under Section 8, IBC, 2016.

10. In "**Mobilox Innovations Pvt. Ltd. Vs. Kirusa Software (P) Limited- 2017 1 SCC OnLine SC 353**", the Hon'ble Supreme Court held that the 'existence of the dispute' and/or the suit or arbitration proceeding must be pre-existing – i.e. it must exist before the receipt of the demand notice or invoice, as the case may be and observed:

"33. The scheme under Sections 8 and 9 of the Code, appears to be that an operational creditor, as defined, may, on the occurrence of a default (i.e., on non-payment of a debt, any part whereof has become due

*and payable and has not been repaid), deliver a demand notice of such unpaid operational debt or deliver the copy of an invoice demanding payment of such amount to the corporate debtor in the form set out in Rule 5 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 read with Form 3 or 4, as the case may be (Section 8(1)). **Within a period of 10 days of the receipt of such demand notice or copy of invoice, the corporate debtor must bring to the notice of the operational creditor the existence of a dispute and/or the record of the pendency of a suit or arbitration proceeding filed before the receipt of such notice or invoice in relation to such dispute (Section 8(2)(a)). What is important is that the existence of the dispute and/or the suit or arbitration proceeding must be pre-existing – i.e. it must exist before the receipt of the demand notice or invoice, as the case may be.”***

11. In the said case, the Hon’ble Supreme Court held as to what are the facts to be examined by the Adjudicating Authority while examining an application under Section 9, which is as follows:

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

12. From the aforesaid decision, it is clear that the existence of 'Dispute' must be 'pre-existing' i.e. it must exist before the receipt of the demand notice or invoice. If it comes to the notice of the Adjudicating Authority that the 'operational debt' is exceeding Rs. 1 lakh and the Application shows that the aforesaid debt is due and payable and has not been paid, in such case, in absence of any 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', the Application under Section 9 cannot be rejected and is required to be admitted.

13. In the present case, the first point which arises for consideration is whether the 'Dispute' pertaining to the invoice of November 2017 was settled between the parties. At this juncture, it is relevant to reproduce the email 02.01.2018 addressed to the Corporate Debtor by the Operational Creditor relied upon by both the parties;

Email dated January 2, 2018

Dear Mr. Pragnesh Ji,

Firstly sorry for the inconvenience caused. Please refer the mails and conversation M/s Parikh Packaging feels that our CC MET-PET is not suitable for their particular shampoo application. As we can assure that the same material is being sent since long. There is no deviation at our end and the properties are well within the specified specification. The same product we are delivering to many overseas customer and in Domestic market too.

Being a valued and respected customer we and our management has agreed and decided to take back balance CC MET PET of 9116.4 Kgs (as per mail of Mr. Ravi Kant Chauhan dated 28th Dec 2016). We are supposed to collect the said material yesterday as our truck was available in Ahmedabad. Finally as per our marketing person Mr. Amit Singh and your concern person it is to be collected in couple of day.

Regarding the laminate rejection, please refer our Meeting with M/s Parikh Packaging (mail dated 6th Dec 2016 sent by Mr. Jaymin Patel and our reply dated 12th Dec 2016 sent by Mr. Amit Singh), Sumilon cannot accept the claim. It is clearly mentioned that “Claim after lamination printing process will not be reimbursed.” which is not possible too. As a valued customer. Sumilon is agree to take back the CC MET PET of 9116.4 Kgs only.

With Regards

*MD Joshi
Vice President Operations
Sumilon Polyester Ltd.*

(Emphasis Supplied)

14. The aforementioned email establishes that goods of 9116.4 Kg was taken back by the Operational Creditor, comprising of ‘unused film’ and the claim with respect to ‘laminated and used film’ was rejected by the Operational Creditor. This email is subsequent to the correspondence between the parties on 30.11.2017, 07.12.2017, 11.12.2017, 13.12.2017 and 02.01.2018; in reply to the same, the Operational Creditor on 31.01.2018 communicated as follows;

Email dated January 31, 2018

Subject: *Re: Found Blocking and Metal Transfer Issues in Sumilon CC Pet and CC Met Pet*
Dear Mr. Ravindra,

I am sure, you have gone through the valid and a detailed explanation of our plant and technical head, Mr. M.D. Joshi.

As explained to you that as long as the unconverted film that we supplied to you, though there are no technical defects but we have still taken it back considering that you are one of our prime and prestigious customer. However, the claim being imposed by you after converting and using the film is not at all in order and justifiable as we are not liable to bear any such cost which is definitely not because of our film quality.

In view of these facts, we request you to kindly release our payment and we look forward to have a continued business with your esteemed organization.

Thanks and regards,
Amit Singh
Manager (Marketing)

(Emphasis Supplied)

Email dated January 4, 2019 addressed by the Corporate Debtor to the Operational Creditor.

Dear Mr. Amit,

Up till now we had waited for the technical person to visit and clarified the problem. Now our account department has asked to clear the account so kindly find the below final deduction and explanation from our end.

Finally all efforts gone for toss and we lost our esteemed customer on account of the same.

The total laminate supplied by us cost to the tune of more than 40 Lakh.

But due to long relation with customer, we had tried to convince them to use the laminate in small lots and salvage. So finally after salvaging the complete laminate the total rejection which was debited is to the tune of 11.5 Lakh. Which will be finally debited to M/s. Sumilon and balance account can be cleared if something which is withhold on the same account.

Kindly make the note of the same.

Regards
Pragnesh.

(Emphasis Supplied)

15. It is the case of Learned Counsel for the Appellant that this 'Dispute' was resolved and he relies on the email dated 10.01.2019, addressed by the Corporate Debtor reproduced as hereunder to establish that the pending issues with respect to November, 2017 supply were all cleared in May 2018.

Email dated 10 January 2019

Subject: Re: Found Blocking and Metal Transfer Issues in Sumilon CC Pet and CC Met Pet

Dear Sir,

Further to explain you that we have all the counter samples in our lab pertaining to the lot which we had supplied to you in past which have been thoroughly checked by our QC and there was no complaint in the Film. However if you have any doubts you can send your concern persons to our factory with all the Film samples pertaining to those lots which you are claiming for the complaint to our factory and in front of them our QC department will again check those samples and prove that there was no defect in our Films.

I therefore requesting you to kindly confirm on this and do not hold the payment for unreasonable quality issues since we trusted you and supplied the material on credit terms and when it is coming to clear the balance payments you are raising the quality issues which is not in-order and acceptable to us on your abrupt decision.

Look forward to your immediate attention to our request for clearing the balance amount.

NOTE- Please note as per our discussions and confirmation with Mr. Ravindra Ji all such pending issues were cleared in May' 2018 and accordingly the account was cleared and we restarted the business with in good faith. Now again these issues are being raised by you, not acceptable.

(Emphasis Supplied)

16. A perusal of the ledger account for the period 01.04.2017 to 30.04.2019 heavily relied upon by the Learned Counsel for the Appellant to substantiate his contention that the 'Dispute' with respect to the November 2017 transaction was settled and the balance amounts were also paid for, by the Operational Creditor, shows that a total amount of Rs. 87,78,462/- was paid by the Operational Creditor to the Corporate Debtor between 01.02.2018 and 05.02.2018. On a pointed query from the Bench to the Learned Counsel for the Appellant with respect to the 'quantum' of the balance amount 'due and payable' by the Corporate Debtor and if the amounts reflected in the ledger from 01.02.2018 to 05.02.2018

commemorates the complete balance amount, the Learned Counsel submitted that though the quantum of amount is not mentioned in any of the emails or in the correspondence, these amounts paid subsequent to the 'Disputed transaction' evidence that the 'Dispute' was settled. Be that as it may, it is seen from the ledger that there are payments being made intermittently by the Operational Creditor to the Corporate Debtor from 01.04.2017 onwards and the ledger does not evidence anywhere that these amounts were explicitly paid towards the balance 'due and payable' against the invoice raised in November 2017. Even subsequent to 05.02.2018, there were amounts credited to the account of the Operational Creditor, paid by the Corporate Debtor. In the absence of the exact quantum of amount 'due and payable' by the Corporate Debtor the ledger entries from 01.02.2018 onwards cannot be precisely said to be paid only towards the November 2017 transaction, specifically keeping in view that there is an ongoing relationship and payments were being made from 01.04.2017 onwards. This Tribunal finds force in the contention of the Learned Counsel appearing for the Respondent that there is no cogent evidence that these amounts have been paid towards November 2017 transaction and that the 'Dispute' was completely settled. Learned Counsel placed reliance on the email dated 30.01.2019 and 03.02.2019 to establish that the 'Dispute' with respect to the November 2017 transaction was never resolved.

Email dated January 30, 2019 addressed by the Corporate Debtor to the Operational Creditor.

Mr. Amit,

It looks like you are not trying to understand the scenario of failure. It was very random and not possible to detect in sampling plan, hence got missed

out at your place, I am sure if there is procedure to capture 100% your team must have not created problem intensely.

But for sure this is a problem of Process control which needs focus.

Since we are a converter we cannot be able to absorb the losses because of our vendor mistake and similar way our customer also does not leave us.

If you have doubt on claims, kindly come to our factory will share with you the debit notes raised by our customer on the same ground after helping to salvage the complete consignment.

In this case nothing left-out to discuss. So kindly be a partner and move forward in business with positive approach.

Regards
Pragnesh

(Emphasis Supplied)

Email dated Feb 3, 2019 addressed by the Corporate Debtor to the Operational Creditor.

Dear Mr. Amit,

It looks like that you do not want to understand or intensely trying to make it more complicated. In CC met PET there is no reason the metal get lift and if it is lifting it is clear indication of failure of process, which your team only can able to understand and identify, it is not possible for your quality person nor our quality person can able to catch, until production guy inform upfront.

So do a deep dive in to your process and take this opportunity to standardize your process instead of arguing here.

In case of working with converter always be ready for after effect only, as this effects or failurity can be observed only after processing and we as a converter will never be able to digest losses.

Hope now it is very clear and in a simple language which can be understood by everybody.

So kindly release the credit note and be forward in business, or in next one week you will receive debit note from our accounts.

Ravindra: If credit note not received then kindly send the debit note to them and clear the accounts.

Regards
Pragnesh

(Emphasis Supplied)

Email dated Feb 8, 2019 addressed by the Corporate Debtor to the Operational Creditor.

Subject: Re: Found Blocking and Metal Transfer Issues in Sumilon CC Pet and CC Met Pet

Dear Mr. Jilal,

The issue was never settled and we were just trying to push the customer to consume maximum material so that the losses should be minimised, this we have done in good spirit, but it looks like that the same is taken in different perspective @ M/s Sumilon.

On the contrary because of this episode we had lost the Business of said category of shampoo from M/s Dabur till time.

From our side nobody can conformed on the closure of the same matter.

Now coming back to technical approach, kindly share the single sample of the laminate with correct quality of CC Met PET in which the metal can come out after any type of lamination, you may not be able to submit single meter. This problem raised only because of some malfunctioning in your process.

Any converter in the world will not able to identify such random behavior in the CC Met PET until laminated, so we cannot absorb this losses.

In addition to this now Business Opportunity losses also will be debited to M/s Sumilon.

Purchase team: Kindly stop any future Business with M/s Sumilon, in any category of films.

*Regards
Pragnesh*

(Emphasis Supplied)

17. It is significant to mention that there was no order placed by the Corporate Debtor in the interim period from November 2017 to September 2018. The email dated 08.02.2019 clearly specifies that the Corporate Debtor was not satisfied with the quality of material supplied and had instructed their purchase team to stop all future business with the Operational Creditor in the category of purchase of Films. In the Reply to the

first Demand Notice, the Corporate Debtor has categorically stated that as per ledger entries of the Operational Creditor dated 10.12.2018 and 05.01.2019, as against Tax Invoice No. 810 a total amount of Rs. 31,04,667/- was paid as against the total Invoice Value of Rs. 38,83,168/- after adjusting an amount of Rs. 7,78,501/- towards 'substandard material' supplied. In their Reply to the second Demand Notice dated 18.04.2019, it is reiterated that due to poor metal adhesion with the PET film their clients had rejected the entire laminate quality on account of the substandard quality and further raised debit notes to the tune of Rs. 11.50 Lakhs/-.

*“19. In **“Innoventive Industries Ltd. v. ICICI Bank and Anr.— (2018) 1 SCC 407”**, the Hon’ble Supreme Court while explaining the provisions of Sections 7 or 9 observed and held:*

*“27. The scheme of the Code is to ensure that when a default takes place, in the sense that a debt becomes due and is not paid, the insolvency resolution process begins. Default is defined in Section 3(12) in very wide terms as meaning non-payment of a debt once it becomes due and payable, which includes non-payment of even part thereof or an instalment amount. **For the meaning of “debt”, we have to go to Section 3(11), which in turn tells us that a debt means a liability of obligation in respect of a “claim” and for the meaning of “claim”, we have to go back to Section 3(6) which defines “claim” to mean a right to payment even if it is disputed. The Code gets triggered the moment default is of rupees one lakh or more (Section 4).** The corporate insolvency resolution process may be triggered by the corporate debtor itself or a financial creditor or operational creditor. A*

distinction is made by the Code between debts owed to financial creditors and operational creditors. A financial creditor has been defined under Section 5(7) as a person to whom a financial debt is owed and a financial debt is defined in Section 5(8) to mean a debt which is disbursed against consideration for the time value of money. As opposed to this, an operational creditor means a person to whom an operational debt is owed and an operational debt under Section 5(21) means a claim in respect of provision of goods or services.

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*29. The scheme of Section 7 stands in contrast with the scheme under Section 8 where an operational creditor is, on the occurrence of a default, to first deliver a demand notice of the unpaid debt to the operational debtor in the manner provided in Section 8(1) of the Code. Under Section 8(2), the corporate debtor can, within a period of 10 days of receipt of the demand notice or copy of the invoice mentioned of a dispute or the record of the pendency of a suit or arbitration proceedings, which is pre-existing- i.e. before such notice or invoice was received by the corporate debtor. **The moment there is existence of such a dispute, the operational creditor gets out of the clutches of the Code.***

18. It may not be out of place for this Tribunal to make a pertinent mention that in law if there was a 'Dispute in existence' and even before the issuance of Demand Notice under Section 8(1) of the I&B Code, the Application for initiation of Insolvency Process by an Operational Creditor can be rejected by the Adjudicating Authority.

19. In the present case, the 'Reply' to the two Demand Notices, read with the email correspondence on 02.01.2018 communicated by the Operational Creditor to the Corporate Debtor, it is evidenced that 9116.4 Kgs of unused film was taken back by the Operational Creditor on account of the 'Dispute' raised by the Corporate Debtor regarding the poor adhesion of the subject films. Additionally, the invoices, the emails exchanged between the parties and also the ledger entries establish that the total invoice amount of Invoice No. 810 is Rs. 38,83,168/- out of which admittedly, only an amount of Rs. 31,04,667/- was paid. After the supply of November 2017 consignment, the Corporate Debtor had raised the 'Dispute' regarding inferior quality of goods mentioning poor metal adhesion the PET film and complained that on account of the inferior quality the Company had suffered a loss of Rs. 22 Lakhs/-. Though the balance stock of 9116.4 kgs was taken back by the Operational Creditor, it is seen from the record that the loss on account of laminated material was never reimbursed. The email dated 04.01.2019 establishes that the Corporate Debtor intimated the final deduction to the Operational Creditor to the tune of Rs. 11.50 Lakhs/-. Vide an email dated 07.01.2019, the Corporate Debtor disagreed with the said deduction and requested the Operational Creditor to make payment of the goods supplied in the month of September 2018 and the same request was repeated in the emails exchanged on 09th and 10th January and 3rd and 4th February 2019.

20. These emails clearly show that there is an ongoing 'Dispute' which is not 'specific' to only November 2017 transaction. The email dated 08.02.2019 sent by the Operational Creditor to the Corporate Debtor categorically states that *'the issue was never settled,'* that nobody on behalf

of the Operational Creditor had confirmed the closure of the matters; that the problem in the material supplied was on account of process malfunction at the end of the Corporate Debtor and that the Operational Creditor suffered huge losses and had instructed their office to stop future business with the Operational Creditor. The material on record, specifically the email dated 08.02.2019 evidences that the 'Dispute' is not 'transaction centric' but is an ongoing 'Dispute'. Additionally, there is no documentary evidence to substantiate the contention of the Learned Counsel for the Appellant that November 2017 'Dispute' was settled. The correspondence between the parties establishes that the 'Dispute' is with respect to substandard material supplied for both the consignments and explicitly refers to 'problem of adhesion' which led to laminates becoming unusable. The Hon'ble Supreme Court in **Mobilox (Supra)** has observed that all that the Adjudicating Authority has to see at 'the stage of Admission' 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 or a moonshine defence unsupported by tangible materials/evidence. The Hon'ble Supreme Court in the decision **Transmission Corporation of Andhra Pradesh Limited V/s. Equipment Conductors and Cables Limited reported in (2019) 12 SCC 697**, categorically laid down that '*IBC was not intended to be a substitute to a recovery forum and that whenever there was existence of a real 'Dispute', IBC provisions could not be invoked*'. The object of the Code, at least insofar as Operational Creditors are concerned, was to initiate Insolvency Process against the Corporate Debtor only in clear cases where a real 'Dispute' between the parties as to the 'debt

owed' did not exist. In the instant case, this Tribunal is of the considered view that there is sufficient evidence on record to exhibit a 'Pre-Existing Dispute' between the parties prior to the issuance of the Demand Notice under Section 8, IBC, 2016.

21. In the present case, the defence is not spurious, mere bluster, plainly frivolous or vexatious. Therefore, this Tribunal is of the consequent view that the ratio of the Judgement of the Hon'ble Supreme Court in the case of ***M/s. Mobilox Innovations Pvt. Ltd. V/s. Kirusa Software Pvt. Ltd. reported in (2018) 1 SCC 353*** squarely applies to the facts of the attendant circumstances of the case.

22. In view of the foregoing discussions this Tribunal finds no legal infirmity in the Impugned Order of the Adjudicating Authority. Accordingly, this Appeal fails.

23. In fine the instant Appeal is dismissed for the reasons ascribed by this Tribunal. There shall no order as to costs.

[Justice Venugopal M.]
Member (Judicial)

[Ms. Shreesha Merla]
Member (Technical)

NEW DELHI
23rd December, 2020

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