

**IN THE NATIONAL COMPANY LAW TRIBUNAL  
DIVISION BENCH (COURT- I) CHENNAI**

ATTENDANCE CUM ORDER SHEET OF THE HEARING  
HELD ON **24.04.2026** THROUGH VIDEO CONFERENCING

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**PRESENT:** HON'BLE SHRI. SANJIV JAIN, MEMBER (JUDICIAL)  
HON'BLE SHRI. VENKATARAMAN SUBRAMANIAM, MEMBER (TECHNICAL)

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**IN THE MATTER OF** : New Chennai Township Pvt Ltd  
Vs  
Eswari Electricals Pvt Ltd

**MAIN PETITION NUMBER** : CP(IB)/147(CHE)/2024

**(IA/MA) APPLICATION NUMBERS**

IA(IBC)/1779(CHE)/2024

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**ORDER**

Present: Ld. Counsel Ms. Naga Harshitha for the Petitioner.

Ld. Counsel Shri. Kasthuri Rangan for the Corporate Debtor.

Vide common order pronounced in Open Court, both petition and the application are dismissed with no orders as to cost.

File be consigned to records.

**Sd/-**

**(VENKATARAMAN SUBRAMANIAM)**  
MEMBER (TECHNICAL)

MG

Date: 24.04.2026

**Sd/-**

**(SANJIV JAIN)**  
MEMBER (JUDICIAL)

IN THE NATIONAL COMPANY LAW TRIBUNAL,  
DIVISION BENCH – I, CHENNAI

**CP(IB)/147(CHE)/2024**

*(filed under Section 9 of the Insolvency and Bankruptcy Code, 2016 under r/w Rule 6 of the  
Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016)*

*In the matter of Eswari Electrical Private Limited*

**New Chennai Township Private Limited,**

Having its Registered Office at  
Seekinakuppam Village,  
Kancheepuram, Cheyyur,  
Chengalpet District-603 305  
(Tamil Nadu)

*... Petitioner/Operational Creditor*

-Vs-

**Eswari Electricals Private Limited,**

Plot No. 64, Industrial Estate,  
Perungudi, Chennai-600 096

*.... Respondent/Corporate Debtor*

**Present:**

*For Operational Creditor* : *Shri. B. Ramana Kumar, Advocate*  
*Ms. S. Poornima, Advocate*  
*Ms. S. Gowri, Advocate*

*For Respondent* : *Shri. S.R. Sundar, Advocate*  
*Shri. Kasturi Rangan S., Advocate*

ALONG WITH  
IA(IBC)/1779(CHE)/2024  
In  
CP(IB/147(CHE)/2024

*(filed under Section 65 of the Insolvency and Bankruptcy Code, 2016)*

**Eswari Electricals Private Limited,**

Having office at:

Plot No. 64, Industrial Estate,

Perungudi, Chennai-600 096

*.... Applicant/Corporate Debtor*

-Vs-

**New Chennai Township Private Limited,**

Having its Registered Office at

Seekinakuppam Village,

Kancheepuram, Cheyyur,

Chengalpet District-603 305 (Tamil Nadu)

*.... Respondent/Operational Creditor*

**Present:**

*For Applicant* : *Shri. S.R. Sundar, Advocate*  
*Shri. Kasturi Rangan S., Advocate*

*For Respondent* : *Shri. B. Ramana Kumar, Advocate*

**CORAM:**

**SANJIV JAIN, MEMBER (JUDICIAL)**

**VENKATARAMAN SUBRAMANIAM, MEMBER (TECHNICAL)**

*Order Pronounced on 24<sup>th</sup> April, 2026*

**COMMON ORDER**

*(Heard through Hybrid Mode)*

This petition CP(IBC)/147(CHE)/2024 under Section 9 of the Insolvency and Bankruptcy Code, 2016 {"**IBC**") r/w Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 has been filed by **New Chennai Township Private Limited** (hereinafter referred to as "**Petitioner/Operational Creditor**") against **Eswari Electricals Limited** (hereinafter referred to as ("**Respondent/Corporate Debtor**") for initiating Corporate Insolvency Resolution Process ("**CIRP**").

An application IA(IBC)/1779(CHE)/2024 under Section 65 of the Insolvency and Bankruptcy Code, 2016 has been filed by **Eswari Electricals Private Limited** (Corporate Debtor) against **New Chennai Township Private Limited** (Operational Creditor) seeking directions to penalize and punish the Operational Creditor.

2. **Part-I** of the petition sets out the particulars of the Petitioner/Operational Creditor, New Chennai Township Private Limited. It has its Office at No.15/26, 2<sup>nd</sup> Main Road, Korrur Garden, Kotturpuram, Chennai-600 085. **Part-II** of the petition sets out the details of the Corporate Debtor, Eswari Electricals Private Limited. It was incorporated on 29.05.1992

with Nominal Share Capital of Rs.4,50,00,000 and Paid-up Share Capital of Rs.4,50,00,000. Its Registered Office is situated at Plot No.64, Industrial Estate, Perungudi, Chennai-600 096 within the jurisdiction of this Tribunal. In **Part-III** of the petition, the Petitioner has not proposed the name of any Interim Resolution Professional. **Part-IV** of the petition contains the particulars of operational debt i.e., Rs.1,78,18,246/- and date of default i.e., 31.12.2021. This petition has been filed on 29.05.2024. In **Part-V** of the petition, the Petitioner has enclosed copy of the Lease Deed dated 01.02.2012, 23.04.2013, MOU dated 09.11.2022 and details of invoices/payments.

3. The case of the Petitioner in brief is that the Petitioner is the owner of a property measuring 312 Acres situated at Paramankeni and Vellur villages of Cheyyur Taluk, Chengalpet District. It was notified as Special Economic Zone (SEZ) by the Central Government. The Petitioner developed the infrastructure facilities in the SEZ. It obtained approvals for its operations from the Government Authorities. The Corporate Debtor entered into a Lease Deed for a period of five years vide Lease Deed dated 01.02.2012 registered vide Document No. 456/2012. The premises was on a carpet area of 9965.42 square feet described in Item 2 & 3 of Schedule-B. At the request of the Lessee/Corporate Debtor, the Petitioner allotted additional building space

for 99 years after executing a Lease Deed on 23.04.2013 for 1.989 Acres of land mentioned in **Schedule-B** of the registered Document No. 1509/2013.

4. A Memorandum of Understanding was entered into between the parties on 09.11.2022 vide which Lease Deed registered vide Document No. 1509/2013 was cancelled. A Sale Deed was executed and a new space of 1.989 Acres of land was allotted to the Corporate Debtor since the Petitioner required the space for its own construction works. It is stated that the Lessee/Corporate Debtor defaulted in making payment of the lease amount in respect of first lease deed dated 01.02.2012 and also the maintenance charges in respect of second lease deed dated 23.04.2013. It is stated that it even did not shift the DHL place nor paid the eight months rent thus violated the terms of the Lease Deeds and the MOU. It is stated that as on 31.12.2021, a sum of Rs.1,78,18,246/- became due and payable by the Corporate Debtor as per details below:

Outstanding lease rent maintenance etc. as per MOU	-	Rs. 87,17,784/-
Rent outstanding for eight months due to non-Shifting of DHL	-	Rs. 44,26,082/-
Unpaid maintenance charges @ 5000/- per month From 23.04.2013 to 31.03.2024	-	Rs. 16,06,283/-
Interest as per the Clause of Lease Deed from the Date of execution of lease deed	-	Rs. 30,68,097/-
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		<b>Rs.1,78,18,246/-</b>
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5. It is stated that the Petitioner issued a Demand Notice in Form-3 on 08.04.2024 on which the Corporate Debtor sent an interim reply by mail on 15.05.2024 and another reply on 22.05.2024 but did not make the payments within ten days from the date of receipt of the notice alleging pre-existing dispute on flimsy and frivolous grounds.

6. **On getting notice of the petition**, the Corporate Debtor filed the reply alleging that the Petitioner never raised any invoice on the Respondent till date. The notice was sent without any invoice. It is stated that no dues are payable by the Respondent which fact the Petitioner had admitted in its letter dated 16.12.2023 after verification of accounts. This petition is nothing but a counterblast to the complaint filed by the Respondent under section 138 of the Negotiable Instrument Act, 1881 which was filed prior to issuance of Form-3 notice. It is stated that the Petitioner had issued a cheque dated 14.02.2024 for

Rs.15,02,304/- towards settlement of its dues to the Respondent which on presentation was dishonoured with the remarks “account closed”.

7. The Respondent however admitted that it had entered into a Lease vide Lease Deed dated 10.04.2023. It is stated that a dispute arose in terms of the lease deed and the Respondent issued a notice dated 03.06.2024 invoking the arbitration clause for adjudication of disputes. It is stated that the Petitioner did not respond to the notice. It is stated that it has approached Hon'ble High Court for appointment of an Arbitrator under section 11 of Arbitration and Conciliation Act, 1996.

8. It is stated that the Petitioner had defaulted in payment of dues worth Rs.400.0 Crores to its creditor, Phoenix ARC Private Limited. The said creditor filed the insolvency proceedings against the Petitioner in CP/636/IB/2017. Shri. L.K. Sivaramakrishnan, RP was appointed to take over the operations and management of the Petitioner. It is stated that during the CIRP, neither the creditor nor the RP claimed any outstanding payable by the Respondent to the Petitioner. The Petitioner has suppressed the entire facts and the agreements including the mails, cancellation of lease deed etc. to escape its liability against the Respondent and as such it deserves to be penalized under Section 65 of IBC, 2016.

9. It is stated that the Respondent had received the approval from MEPZ, SEZ, Chennai on 09.12.2011 to set up its factory in the SEZ promoted by the Petitioner (Annexure-6). It had taken a factory premises on lease measuring 9965.42 square feet from the Petitioner vide Lease Deed dated 01.02.2012. Some of the facilities to run the business at the incubation centres were already provided. Subsequently, they entered into another lease deed dated 23.04.2013 for 99 years for a land measuring 1.989 Acres. No facility was available on the said land.

10. It is stated that as per the lease deeds, the Petitioner was obligated to provide basis amenities such as water supply, sewage management, high tension power supply which were critical and crucial towards the functioning of any company situated in the premises. The Petitioner however did not provide these amenities and failed to fulfil its contractual obligations. This led to considerable impact on getting approvals from the DTCP by the Respondent. After getting the approvals, it commenced the construction activities. When the work was at the foundation level, the Petitioner approached it (Respondent) and requested to take an alternative site of equivalent area as the Petitioner wanted to realign the land parcel and sell about 42 Acres of land to another company. It assured the Respondent that it

shall compensate the expenses incurred by the Respondent. It is stated that they entered into a MOU dated 09.11.2022 as Annexure-7. Clause 10 of the MOU provided that the Petitioner would obtain DTCP approval for the proposed new factory building of the Respondent. The monthly lease rental payable by the Lessee shall be completely waived of until the time of Lessee handing over the possession described in Schedule-C.

11. In reference to shifting of premises on temporary basis, it is stated that the Petitioner has not brought the entire communication before this Tribunal. The Petitioner had conceded that it is not in a position to adhere to the terms of the MOU dated 09.11.2022. It enclosed a DD of Rs.60.0 Lakhs in terms of the MOU vide mail dated 10.04.2023. It is stated that by this MOU, the lease was cancelled on 10.04.2023 as Annexure-9 which cancellation has been suppressed by the Petitioner. It is stated that in the documents cancelling the lease deed and executing the MOU, the Petitioner had confirmed and agreed that the Respondent is not liable to pay any amount to the Petitioner in relation to the lease deed dated 23.04.2013. It is stated that MOU dated 09.11.2022 finds mention that the property as per the Lease Deed dated 23.04.2013 and the property which was leased for 99 years could not be put to use due to pendency of litigation, DTCP approval and non-availability of the

documents. It is stated that because of non-approvals, the Respondent suffered losses which are solely attributable to the Petitioner. The construction work of the new factory building was delayed. It is stated that the Respondent had its factory in full operation in the rented premises located in incubation space but the Petitioner leased the factory building and the adjoining area to another company Altek Biesel Needles Limited without informing the Respondent after obtaining permission from MEPZ, SEZ.

12. It is stated that when the Respondent raised the dispute, the Petitioner asked the Respondent to relocate the factory temporarily to another incubation space known as DHL place vide letter dated 10.04.2023 as Annexure-10. Considering the longstanding relationship, the Respondent agreed and moved its factory to the temporary factory premises. In the meantime, the Respondent's new factory construction was completed, however, the Petitioner did not arrange the basic facilities. It is stated that the Petitioner requested the Respondent to pay the fee for the supply of the single point High Tension Power Connection promising to reimburse the same in due course vide letter dated 03.11.2023. It is stated that when the Respondent was ready to move its factory from the temporary location to the newly constructed factory building, the Petitioner produced a statement of

accounts for the last ten years and sought monies from the Respondent. It is stated that the statement of account is erroneous and the Respondent does not owe any liability to the Petitioner. It is stated that there was dispute even prior to issuance of Form-3 which can be seen from the mails and correspondences and as such the petition is not maintainable.

13. The Petitioner also filed the copy of notice under Section 21 of the Arbitration and Conciliation Act, 1996 dated 03.06.2024 along with acknowledgment card and copy of the petition filed under section 11 of the Act dated 16.08.2024 for appointment of an Arbitrator.

14. **The Respondent also filed the application IA/1779/2024** wherein it reiterated the facts as stated in the reply. It is stated that no amount is payable by the Respondent and this petition is an abuse of process of the Court wherein the Petitioner has suppressed various facts and the terms of the documents referred above. It is stated that this petition has been filed with a malicious intent and as such the Petitioner is liable to be penalized and punished as per Section 65 of IBC, 2016.

15. **The Petitioner filed the rejoinder / reply to the application IA/1779/2024** wherein it reiterated the facts as stated in the petition and

denied the allegations of the Respondent. It is stated that this case revolves around the two lease deeds. In respect of one lease deed, the Respondent has not paid the lease amount. In respect of 2<sup>nd</sup> lease, it has not paid the maintenance charges. It is stated that no invoices were issued as the contents of the lease deeds spell out the payments to be made by the Respondent. It never stated that no dues in respect of the lease deeds are payable by the Respondent. It is stated that although the notice under Section 138 of the Negotiable Instrument Act was issued prior to Section 8 notice but it had not filed any complaint under Section 138 of the Act. It is stated that there was no pre-existing dispute. It is stated that the Respondent has liabilities as per the lease deeds. It though having approvals from SEZ, did not develop the leased premises nor did the productive work. It is stated that the Respondent failed to act as per the MOU whereby it had agreed to vacate the premises but it did not vacate which led to monetary loss to the Petitioner. It is stated that the Petitioner had paid Rs. 60.0 Lakhs to the Respondent which shows the bonafides of the Petitioner. The cheque of Rs.15,02,304/- was issued for a different issue and the matter is pending before the court. It is stated that the Respondent did not send the reply within ten days from the receipt of Section 8 notice and as such insolvency proceedings be initiated against the

Respondent/Corporate Debtor. It is stated that the cheque dishonour case cannot be considered as pre-existing dispute. Section 65 of IBC will not attract in this case as it was the Corporate Debtor which has not acted on the MOU.

**16. We have heard Ld. Counsels for the parties and perused the written synopsis, the documents and the case laws referred by the parties.**

17. A perusal of documents reveals that the Petitioner was the owner of 312 Acres of land situated at Paramankeni and Vellur Villages of Cheyyur Taluk, Chengalpet District. It was notified as SEZ by the Central Government. The Petitioner developed infrastructural facilities in the SEZ and obtained approvals from the Authorities. It entered into a lease deed with the Corporate Debtor on 01.02.2012 for a period of five years. As per the lease deed, the Petitioner leased 9965.42 sq.ft. of built up industrial space with amenities described in Item 2&3 of Schedule-B. It was taken for setting up operation, maintenance and expansion of an unit for manufacturing load break switches, isolators and disconnectors etc. It was for a period of five years commencing from 01.02.2012. In the lease deed, the Lessee/Corporate Debtor confirmed that it shall commence its operation after obtaining permission/license from the Authorities and the Petitioner shall provide single point of electricity at a designated point of the premises from where the

Respondent shall make its own arrangements. The Lessor shall provide septic tank at its own cost. The lease was renewable for a further period on a mutually agreed terms. There was a termination clause in the lease deed and reference of dispute to the Arbitrator. The building is known as incubation centre having built up area of 33716.18 square feet.

18. The Corporate Debtor entered into another lease deed with the Petitioner on 23.04.2013 for setting up a unit in the SEZ for manufacturing load break switches etc. on a land measuring 1.989 Acres as per the approval granted to it described in Schedule-B for a period of 99 years. It paid the amount of Rs.79,17,000/- on various dates out of the mutually agreed sum of Rs.1,19,34,000/-. It also agreed to pay Rs.5,000/- per acre per month towards maintenance charges for the common amenities being developed by the Lessor. As per the lease deed, the Petitioner shall provide single point of electricity at a designated point at the boundary of the plot. Any dispute was subject to the jurisdiction of the arbitration.

19. Documents show that on 09.11.2022, they entered into MOU dated 09.11.2022 which finds mention that the Lessee/Corporate Debtor has obtained approval from MEPZ for operation of its business from SEZ vide letter dated 09.12.2021 and it has been operating from the SEZ in the factory building

taken on monthly rent vide Lease Deed dated 01.12.2012. It obtained the building plan permission from the authorities after entering a lease dated 23.04.2013 and did the foundation work described in Schedule-B of the property.

20. The MOU records that the Petitioner wanted to realign the land in the SEZ. After discussion, the Petitioner agreed to allot equivalent land as described in Schedule-D to the Respondent and cancel the lease deed dated 23.04.2013 by doing the required ground levelling, foundation and soil back filling work in the Schedule-D property on or before 30.11.2022. The Petitioner also agreed to obtain necessary factory building approvals and permissions from DTCP at its own cost in the name of the Lessee for Schedule-D property. The Respondent also agreed that it shall discharge all the mortgage charges, if any, in Schedule-B property and ensured that the property is free from encumbrances and it will cancel the lease deed by executing a Cancellation Deed. As per Clause 7, the Petitioner shall pay the registration charges etc. on the property situated in Schedule-D and shall obtain the required building permission. It shall pay Rs.60.0 Lakhs as compensation towards the cost incurred for relocating the leased premises. It was agreed by the Lessee/Respondent that it shall vacate the existing factory

premises stipulated in Schedule-C from the date of completion of the foundation and ground levelling of Schedule-D property. The Petitioner agreed that it shall waive of the monthly lease rental payable by the Lessee to the Lessor until the time Lessee hands over the possession of the property described in Schedule-C.

21. The letters dated 08.04.2023 at page 93 & 94 show that the Petitioner provisionally allotted 10000 sq.ft. of built up space to the Respondent for shifting the unit to another building. On 10.04.2023, it wrote a letter at page 95 that it has done the work during January, 2023 but for various reasons, the work has not been progressing as per the timeline. It stated that the space occupied by the Respondent has already been taken up by Altek Biesel Needles Limited during September, 2022. It enclosed copy of the DD for Rs.60.0 Lakhs as part of the MOU. The Petitioner then executed the Lease Deed dated 01.04.2023 in respect of Schedule-B property for setting up the factory for a period of 99 years. There is a letter at page 131 dated 17.04.2023 written by the Respondent/Corporate Debtor to MEPZ for relocating the factory from the incubation space enclosing 'No Objection' given by the Petitioner dated 17.04.2023 at page 132.

22. In the instant case, the Petitioner had issued a cheque for Rs.15,02,304/- to the Respondent on 16.12.2023 to facilitate the vacation of the partially occupied DHL building towards rental deposit and DTCP fees paid by the Respondent stating that there are no other dues as per the books of accounts. On presentation, the said cheque was dishonoured with the remarks “account closed”. The letter states that no due was payable by the Corporate Debtor in respect of the premises occupied by DHL building as referred in the petition. The Respondent had sent a letter dated 28.02.2024 at page 27 of the reply addressed to the Petitioner where it was alleged that despite assurance to get approval for the lease area in respect of lease deed dated 01.02.2012, it failed to pay the charges for approval. It (Respondent) paid the charges to DTCP and got the leased area approved. It vacated the leased premises as per the contract on 21.12.2023 and handed over the vacant possession but it (Petitioner) failed to repay the security amount. After repeated requests and demands, it issued the cheque for Rs.15,02,304/- which was returned unpaid with endorsement “account closed”.

23. Considering the above correspondences, we don't find merit in the contention of the Petitioner that the cheque was in relation to other transactions and not in relation to the above lease deeds. The mail

communications dated 10.04.2023 and 08.04.2023, 29.03.2023 at page 54 & 55, also show that the disputes were raised by the Corporate Debtor prior to the notice dated 15.05.2024 under Section 8 of IBC. The disputes are the pre-existing disputes prior to filing of the petition which according to the Respondent have not been resolved. The Respondent has also issued notice under Section 21 invoking the Arbitration Clause on 03.06.2024 and filed a petition under Section 11 of the Arbitration & Conciliation Act, 1996 for appointment of an Arbitrator as per the Lease Deed and the MOU. In the notice, it highlighted that as per the cancellation of lease deed dated 10.04.2023, the Respondent is not liable to pay any amount to the Petitioner in connection with lease deed dated 23.04.2013 since all the transactions were settled. The Respondent has placed copy of the cancellation of lease deed dated 10.04.2023 at page 58 of the reply in support of the same which records that the Lessee (Respondent) confirms that it has no present, past or future right or claim in Schedule-B property or against the Lessor in connection with lease deed dated 23.04.2013 and it confirms the handing over possession of Schedule-B property to the Lessor (Petitioner) and will not be liable for any liability in respect of Schedule-B property with effect from the date of the cancellation of lease deed and that it has paid the lease rent till the date of

execution of this deed which the Lessor acknowledges and confirms that there are no amounts of whatsoever nature due and payable by the Lessee to the Lessor under the said lease deed.

24. It is important to highlight a mail sent by the Respondent on 16.11.2023 at page 85 which is reproduced as under:

*Thu. Nov. 16, 2023 at 10.12 A.M.*

*Dear Mr. Larsen,*

*This is in reply to your trailing mail, we wish to bring to your notice the attached statement of accounts this is completely erroneous, and we have observed several junk entries.*

*The errors in your books of accounts were already informed to you during our last telephonic conversation. We have reconciled your statement of accounts and herewith we have attached the same with out comments and remarks.*

*At the outset, we confirm to state that the following are the details of the final payment due to be settled by NCTPL to ESWARI.*

- 1. Rental advance amount of Rs.6,23,380/-*
- 2. DTCP expenditure: Rs. 8,79,124/-*
- 3. TNEB Expenses: Rs.617,347.00 (less EMD Rs. 93,840.00) = R.523,507.00*  
*(As per Deed of Lease para 2.IV in page 6)*

*Sum of Total Amount Due to be settled by NCTPL: Rs. 20,26,011/-*

*Further, you have attached letter. There is no commitment on the timeline for the payment. Also pending issues such as getting DTCP approval and TNEB Power connection is yet to b complied.*

*We have our serious apprehension on the given situation on how NCTPL will deliver on its commitment. In view of this we request you to settle the accounts immediately and also comply with getting the DTCP approval & the required power connection to our new premises.*

*Upon compliance of all the above we assure you that the DHL premises will be vacated and handed over as is where is basis to you within 3 working days.*

*Assuring your expedited and prompt compliances on the above.*

*Regards*

25. In that mail, the Respondent had raised serious apprehension how the Petitioner would deliver as per commitment.

26. In the present case, the Petitioner has claimed the outstanding lease rent, maintenance and facilities charges as per the MOU outstanding for eight months due to non-shifting of DHL and unpaid maintenance charges from 23.04.2023 to 31.03.2024 and interest though the MOU and the cancellation deed clearly provide that the Respondent is not liable for any dues/payments. This shows that the dispute was existing prior to receipt of the demand notice by the Corporate Debtor under Section 8 of IBC.

27. It is well settled law if the disputes exist prior to filing of the petition, the provisions of IBC cannot be invoked. Exchange of any letter can show existence of a dispute. In the instant case, the dispute as alleged is not

moonshine or spurious. Not it can be said that false evidence has been created by the Corporate Debtor to make the case within the ambit of pre-existing dispute so as to avoid liability to pay the claim. There are many letters/correspondences which are even prior to sending the demand notice. The Hon'ble Supreme Court in the case of *Mobilox Innovations Pvt. Ltd. Vs. Kirusa Software (P) Limited (2018) 1 SCC 353* has held that the 'existence of 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 as follows;

*"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.." At paragraph 51 it is held: "51. ....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.”*

28. In the case of *Jain Irrigation Systems Ltd Vs Pragyawan Technologies Pvt Ltd [CA/311/2023]*, Hon'ble NCLAT Delhi vide order dated 21.03.2023 has held as under:

*“8. From the record, it does appear that prior to Section 8 Notice, issues were raised by the Corporate Debtor including various claims against the Operational Creditor. The submission of Learned Counsel for the Appellant that dispute is a moonshine dispute cannot be accepted in view of the averments and statements made in the Reply-Notice dated 04.01.2020. Section 9 Proceedings are not the proceedings where the dispute raised by the parties arising out of contract between the parties can be gone into and adjudicated. The scheme of Insolvency Proceedings contemplate that the proceeding shall go on only when there is an admitted debt and default, forum is not for deciding and adjudicating the contractual dispute between the parties. Present is a case where prior to Section 8 Notice, letters were issued by the Corporate Debtor and in Reply to Section 8 Notice, detailed Reply has been filed rejecting the claim of the Appellant. The claim having been disputed, present was not a case where Section 9 Application Company Appeal (AT) Ins. No. 311 of 2023 could have been admitted and the Adjudicating Authority has rightly rejected the Section 9 Application. We do not find any error in the Order of the Adjudicating Authority, the Appeal is dismissed.”*

29. As regards the application IA(IBC)/1779(CHE)/2024 filed under Section 65 of IBC, 2016, Section 65 of IBC, 2016 reads as:

***Fraudulent or malicious initiation of proceedings.***

*(1) If, any person initiates the insolvency resolution process or liquidation proceedings fraudulently or with malicious intent for any purpose other than for the resolution of insolvency, or liquidation, as the case may be, the*

*Adjudicating Authority may impose upon such person a penalty which shall not be less than one lakh rupees, but may extend to one crore rupees.*

*(2) If, any person initiates voluntary liquidation proceedings with the intent to defraud any person, the Adjudicating Authority may impose upon such person a penalty which shall not be less than one lakh rupees but may extend to one crore rupees.*

*(3) If any person initiates the pre-packaged insolvency resolution process*

*(a) fraudulently or with malicious intent for any purpose other than for the resolution of insolvency; or*

*(b) with the intent to defraud any person, the Adjudicating Authority may impose upon such person a penalty which shall not be less than one lakh rupees, but may extend to one crore rupees.*

30. Section 65(1) of the Code provides that if any person initiates the insolvency resolution process or liquidation proceedings with a fraudulent or malicious intent, the Adjudicating Authority may impose a penalty upon such person. The Hon'ble National Company Law Appellate Tribunal (NCLAT) in *Monotrone Leasing Pvt. Ltd. Vs. PM Cold Storage Pvt. Ltd., [2020] ibclaw.in 21 NCLAT*, reaffirmed this principle, holding that a petition under Sections 7, 9, or 10 of the IBC cannot be rejected solely on the ground of lack of intent for resolution, unless there is explicit documentary proof of fraudulent or malicious intent.

*"34. Section 65 of the Code provides for penal action for initiating Insolvency Resolution Process with a fraudulent or malicious intent or for any purpose other than the resolution. However, the same cannot be construed to mean that if a petition is filed under Section 7, 9, or 10 of*

*the Code without any malicious or fraudulent intent, then also such a petition can be rejected by the Adjudicating Authority on the ground that the intent of the Applicant/Petitioner was not resolution for Corporate Insolvency Resolution Process. As the proceedings under IBC are summary in nature, it is difficult to determine the intent of the Applicant filing an application under Section 7, 9, or 10 of the Code unless shown explicitly by way of documentary evidence. This situation may arise in specific instances where a petition is filed under IBC specifically with a fraudulent or malicious intent.*

31. The Hon'ble NCLAT in the case of *Getz Cables Pvt. Ltd. v. State Bank of India and Anr. Company Appeal (AT) (Insolvency) No.1953 of 2024* considered the scope of the terms fraudulent and malicious intent. Simply to put, fraud consists of elements of deceit coupled with injury whereas malice is a wrongful act done without lawful justification. The relevant paragraphs of the order are extracted hereunder,

*"16. Necessary ingredients, which required to be proved under Section 65, sub-section (1) are that proceedings are initiated fraudulently or with malicious intent for any purpose other than for the resolution of insolvency. Both expression - fraudulent and malicious has definite connotation. The expression 'fraudulently' has been explained in Advanced Law Lexicon by P Ramanatha Aiyar 6th Edition in following words:*

*"Person does a thing fraudulently if he does it with an intent to defraud, and so to constitute fraud two elements are necessary-deceit, and injury and loss to some person."*

*17. Another expression which occurs in Section 65 is 'malicious intent'. Advanced Law Lexicon by P Ramanatha Aiyar define the word 'malice' in the legal sense in following words:*

*"1. The intent, without justification or excuse, to commit a wrongful act. 2. Reckless disregard of the law or of a person's legal rights."*

*There is also a second definition, which is as follows:*

*"Malice in the legal sense imports (1) the absence of all elements of justifications, excuse or recognized mitigation, and (2) the presence of either (a) an actual intent to cause to particular harm which is produced or harm of the same general nature, or (b) the wanton and wilful doing of an act with awareness of a plain and strong likelihood that such harm may result...."*

18. *The Hon'ble Supreme Court has defined 'malice' in (2003) 8 SCC 567 Chairman & MD. BPL Ltd. vs. S.P. Gururaja and Ors. in paragraph 21, in following words: "21. Malice in common law or acceptance means ill will against a person, but in the legal sense it means a wrongful act done intentionally without just cause or excuse.*

32. *The Hon'ble NCLAT in the case of **Amour Infrastructure LLP Vs. Digital Integrated Technologies Pvt. Ltd. (Company Appeal (AT) (Ins.) No. 884 of 2022 & I.A. No. 2458 of 2022)**, held that an Adjudicating Authority cannot make a finding of fraud/malice unless it is specifically pleaded and backed by documentary evidence. The relevant paragraphs are extracted hereunder*

*"5. Learned Counsel for the respondent has referred to the findings in paragraph 26 of the order which is to the following effect:*

*"From these facts, we have got reasonable basis to reach to a conclusion that application filed under Section 7 is a mechanism whereby financial creditor is trying to settle personal scores and put undue pressure on the corporate debtor. hence, we have no hesitation in holding that this application has been filed with malicious intent and for purposes other than the Resolution of Insolvency of the Corporate Debtor. We further find that corporate debtor is a solvent company"*  
8. *Observations made in paragraph 26 is that Financial Creditor is trying to*

*settle personal scores and put undue pressure on the Corporate Debtor. We are of the view that for proving the ingredient of Section 65 there has to be adequate pleadings and findings. Observations made in paragraph 26 does not fulfil the requirement of Section 65 so as to reject the Section 7 application."*

33. This principle has also been reinforced in the case of *M/s. Flycreative Online Private Limited v. GO Airlines (India) Limited (Int. Petition No. 68/2023)*, the Hon'ble National Company Law Tribunal (NCLT), New Delhi, wherein the Tribunal examined the allegations of fraudulent and malicious intent in insolvency proceedings. The Tribunal emphasized that for an application to be considered malicious under Section 65, there must be substantial and corroborative evidence proving fraudulent intent. It was observed that merely failing to inform creditors about the intention to file for insolvency, does not, by itself, establish malice unless supported by concrete evidence.

*"10. In terms of Section 65 of the Insolvency and Bankruptcy Code, 2016, there must be substantial and corroborative evidence to explicitly prove 'fraudulent intent', 'malice' and 'mens rea' on part of the CD by way of specific documentary evidence and also that the Applicant approached with malicious intent for any purpose other than for the resolution of insolvency."*

34. In light of the above legal position, it is evident that to invoke Section 65, the burden lies on the objecting party to place on record compelling and credible evidence to prove that the Petitioner has approached the Adjudicating Authority with mala fide intent or for purposes extraneous to

the resolution process. In the present case, the Corporate Debtor has failed to produce any such substantial or corroborative material that would support the allegation of fraud or malice. The application **IA(IBC)/1779(CHE)/2024** filed by the Respondent is **dismissed with no orders as to costs**.

35. Since there existed disputes between the parties prior to issuance of notice under Section 8 of IBC, 2016 by the Petitioner, so there being pre-existing dispute, this petition filed under Section 9 of IBC, 2016 cannot be maintained. The petition CP/147/2024 is accordingly **dismissed with no orders as to costs**.

36. In the light of what has been stated above, both the petition and the application are dismissed with no orders as to costs.

37. File be consigned to records.

**Sd/-**  
**VENKATARAMAN SUBRAMANIAM**  
MEMBER (TECHNICAL)

**Sd/-**  
**SANJIV JAIN**  
MEMBER (JUDICIAL)

*Suguna*