NATIONAL COMPANY LAW TRIBUNAL
CHANDIGARH BENCH (COURT-II), CHANDIGARH

CP (IB) No.371/CHD/PB/2022

{Application under Section 9 of the Insolvency and Bankruptcy Code, 2016}

IN THE MATTER OF:

D.D. ENTERPRISES
C-210, Bhamashah Mandi,
Kota, Rajasthan - 324 006
E-mail: dkherada@gmail.com;
acsmanishasharma@gmail.com
Contact No. 8209007214/7442490553
PAN: ADMPK7454P

...Applicant/Operational Creditor

VERSUS

INDIAN NUTRITION PRIVATE LIMITED
(CIN NO: U15330PB2010PTC033490)
Regd. Office: Kohara - Sahnewal Road,
Vill. & P.O. Kohara, Tehsil & Distt. Ludhiana,
Punjab 141 112
Email: contact_us@indiannutrition.in;
admin@indiannutrition.in
Contact No.: 8146613014

...Respondent/ Corporate Debtor

Order delivered on: 30.10.2026

Coram: HON'BLE MR. KHETRABASI BISWAL, MEMBER (JUDICIAL)
HON'BLE MR. SHISHIR AGARWAL, MEMBER (TECHNICAL)

Present:
For the Applicant : Ms. Swati Saluja, Advocate
For the Respondent : Mr. G.S. Sarin, PCS



ORDER

The present Application was filed on 17.11.2022 by **D.D. Enterprises,** (hereinafter referred to as "Applicant"/ "Operational Creditor"), under section 9 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as the "Code") for initiation of Corporate Insolvency Resolution Process ("CIRP") against **Indian Nutrition Private Limited** (hereinafter referred to as "Respondent"/"Corporate Debtor"), for the default amount of Rs. 1,65,14,611/- (with interest of Rs. 58,35,394/- as on 26.09.2022). The date of default, as mentioned in Part IV of the Application, is 25.01.2022.

BRIEF FACTS:

2. Brief averments of the case as stated in the Application by Applicant/Operational Creditor and presented/argued by its Counsel are summarised hereunder:

(i) The present Application has been filed under Section 9 of the Insolvency and Bankruptcy Code, 2016 by the Operational Creditor seeking initiation of Corporate Insolvency Resolution Process against the Corporate Debtor on account of alleged default in payment of operational debt, i.e., an amount of Rs. 1,65,14,611/- (including interest of Rs. 58,35,394/- as on 26.09.2022).

(ii) The Operational Creditor is an MSME-registered proprietary concern engaged in the business of manufacturing and supplying feed ingredients. The Corporate Debtor is stated to be engaged in the business of manufacturing poultry and cattle feed ingredients.

(iii) The Operational Creditor had supplied Soya DOC to the Corporate Debtor as the raw material required by it for the manufacturing of its final product, i.e., poultry feed ingredients. For each supply, it raised GST invoices along with corresponding E-way bills. For the record, the Applicant received its last payment from the Corporate Debtor against the invoices raised on 25.01.2022. According to the Operational Creditor, despite supply of goods and repeated requests for payment, the Corporate Debtor failed to clear the outstanding dues.

(iv) The Operational Creditor has stated that the last payment towards the invoices was received from the Corporate Debtor on 25.01.2022 and has treated the said date as the date of default.

(v) An earlier demand notice dated 09.04.2022 under Section 8 of the Code was issued to the Corporate Debtor claiming an amount of ₹1,51,88,815/-. Accordingly, the Operational Creditor filed CP (IB) No. 213 of 2022 under Section 9 of the Code. However, the said petition was withdrawn due to some technical defect *vide* Order dated 14.09.2022 with liberty to file a fresh Application.

(vi) Thereafter, the Operational Creditor issued a fresh demand notice dated 30.09.2022 in Form 3 and Form 4 under Section 8 of the Code claiming an amount of ₹1,65,14,611/-. The said notice was dispatched through registered post and was delivered to the Corporate Debtor on 17.10.2022. The demand notice was also sent through e-mail on 12.10.2022.

(viii) The Applicant submits that the total amount of claim of the Applicant as per Form 5 is as under:

Sr. No.	Particulars	Amount INR
1.	Copy of GST invoices for supply of Soya DOC along with ledger account.	1,06,79,217 / -
2.	Interest calculated on unpaid invoices up to 26.09.2022 @18% p.a. for the delayed period of payment.	58,35,394/-
	Total Claim made	**1,65,14 ,611/ -**

(ix) Neither any payment was made, nor any reply raising a dispute was received from the Corporate Debtor within the statutory period prescribed under the Code. Consequently, the present Application came to be filed seeking initiation of CIRP against the Corporate Debtor.

3. In this context, the defence placed by the Respondent in its Affidavit Reply, as presented/argued by the learned counsel for the Respondent, is summarised as under:

(i) The principal objection raised by the Corporate Debtor is that the alleged default is barred under Section 10A of the Code. In this regard, it is noted that the invoice dated 28.02.2020, annexed as Annexure A-7 to the Application, for an amount of ₹8,81,449/-, fell due for payment on 28.03.2020, which is within the period covered by Section 10A of the Code. Accordingly, the default arising from the said invoice is subject to the statutory bar under Section 10A. Upon exclusion of the aforesaid invoice, the remaining alleged operational debt works out to ₹97,97,768/-, which falls below the statutory

threshold of ₹1 crore prescribed under Section 4 of the Code. It is, therefore, contended that the Application is not maintainable.

(ii) In support of the aforesaid contention, reliance has been placed on ***Anil Kaushal v. Colliers International (India) Property Services Pvt. Ltd. & Ors., Company Appeal (AT) (Ins.) No. 448 of 2022,*** wherein it is held that the amount liable to be paid during the period exempted by Section 10A cannot be taken into consideration for crossing the threshold of Rs. 1 crore as per Section 4 of the Code. The Corporate Debtor has further relied upon the decision of the Mumbai Bench of the Tribunal in ***Cable Corporation of India Ltd. v. Dentsu Communications India Pvt. Ltd., CP (IB) No. 79/MB/2023***, wherein the Application was dismissed on the grounds of existence of dispute and applicability of Section 10A.

(iii) The Corporate Debtor has contended that disputes regarding the quality of goods supplied were raised much prior to issuance of the demand notices under Section 8 of the Code. It is submitted that such grievances were communicated through an email dated 10.11.2021 annexed as Annexure A-18 to the Application and remained unresolved. Reliance has been placed on ***Mobilox Innovations Private Limited v. Kirusa Software Private Limited, (2018) 1 SCC 353***, wherein the Hon'ble Supreme Court held that while considering an Application under Section 9, the Adjudicating Authority is only required to examine whether there exists a real dispute requiring further investigation and not whether the defence is likely to succeed. If a genuine dispute exists and is not spurious,

hypothetical or illusory, the Application is liable to be rejected. The Corporate Debtor has also relied upon ***Philips India Ltd. v. Goodwill Hospital & Research Centre Ltd., Company Appeal (AT) (Ins.) No. 334 of 2017***, wherein the Hon'ble NCLAT held that where disputes regarding quality of goods or services had been raised prior to issuance of the demand notice, the Application under Section 9 was not maintainable.

(iv) Further reliance has been placed upon ***Nayan Shah v. Viral Rajarshi Mehta & Anr., Company Appeal (AT) (Ins.) No. 44 of 2018***, wherein the Hon'ble NCLAT, relying upon ***Innoventive Industries Ltd. v. ICICI Bank & Anr., (2018) 1 SCC 407***, observed that where the debt itself is disputed, the question of default does not arise.

(v) Further, the Corporate Debtor has also disputed the interest @18% claimed by the Operational Creditor amounting to ₹58,35,394/- and has contended that, in the absence of any agreement regarding payment of interest, the same cannot be treated as operational debt. In support thereof, reliance has been placed on ***SS Polymers v. Kanodia Technoplast Ltd., Company Appeal (AT) (Ins.) No. 1220 of 2019***, wherein it was held that interest cannot be claimed as a matter of right in the absence of any contractual stipulation.

(vi) The Corporate Debtor has further contended that neither of the demand notices dated 09.04.2022 and 30.09.2022 was ever received by it and, therefore, the mandatory requirement under

Section 8 of the Code has not been satisfied. It is also pointed out that the two demand notices mention different dates of default. According to the Corporate Debtor, the first demand notice treats the date of the last invoice as the date of default, whereas the second demand notice refers to the date of the last payment received from the Corporate Debtor. This inconsistency, according to the Corporate Debtor, renders the claim doubtful.

(vii) The Corporate Debtor has submitted that the Operational Creditor had already instituted recovery proceedings before the Micro and Small Enterprises Facilitation Council, Jaipur, being **MSEFC Case No. RJ/24/S/JPQ/00611**, seeking recovery of the same dues and that the said proceedings were pending prior to issuance of the second demand notice. It is contended that the pendency of the said proceedings demonstrates the existence of disputes between the parties and that the Operational Creditor failed to disclose the same in the present Application. A copy of the case status of the recovery case RJ/24/S/JPQ/00611 as available on the MSME SAMADHAAN online portal along with the notice has been annexed as Annexure R-1 to the Reply.

(viii) On the aforesaid grounds, the Corporate Debtor has prayed for dismissal of the present Application as being not maintainable and for imposition of costs upon the Operational Creditor.

4. The Applicant, through its Rejoinder filed vide Diary No. 02931/4, has been briefly summarised as under:-

(i) The Operational Creditor has denied the contention that the present Application is barred by Section 10A of the Code. The last invoice was raised on 28.02.2020, and an E-way bill was also generated on 28.02.2020, which is clearly outside the purview of the suspended period as provided u/s 10A, i.e., from 25.03.2020 to 24.03.2021.

(ii) Section 10A only bars initiation of CIRP for defaults occurring during the protected period and does not apply where the debt arose prior thereto and the default continued thereafter. The parties maintained a running and continuous business account, and payments were not made invoice-wise but through intermittent part payments. Reliance is placed upon the ledger account for the period from 01.12.2019 to 31.03.2022 to contend that the Corporate Debtor continued making part payments against the running account till 25.01.2022, which is stated to be the last payment received.

(iii) As on 25.01.2022, the principal amount outstanding was ₹1,06,79,217/-, which itself exceeded the threshold prescribed under Section 4 of the Code. The payment made on 25.01.2022 constitutes acknowledgment of liability and extends limitation under Section 18 of the Limitation Act, 1963. Reliance is placed on ***Laxmi Pat Surana v. Union Bank of India, (2021) 8 SCC 481***, wherein the Hon'ble Supreme Court held that acknowledgment of liability extends the period of limitation and provides a fresh date from which limitation is to be computed. The Operational Creditor has also contended that even assuming the invoice dated 28.02.2020 is

excluded, the debt would still exceed the statutory threshold after accounting for interest and GST input tax credit availed by the Corporate Debtor.

(iv) The Operational Creditor contends that the Corporate Debtor availed Input Tax Credit (ITC) amounting to ₹5,08,534/- in respect of the goods supplied, despite failing to discharge the corresponding payment obligation, and that, in terms of Section 16(2) of the CGST Act, such ITC is liable to be reversed upon failure to make payment to the supplier within the prescribed period. It is further contended that since the Corporate Debtor neither made payment to the Operational Creditor nor reversed the said ITC, the amount of ₹5,08,534/- is also liable to be considered while determining the debt due. Accordingly, the Operational Creditor has computed the outstanding dues as ₹1,06,79,217/- towards principal, ₹5,08,534/- towards ITC availed by the Corporate Debtor, and ₹58,35,394/- towards interest, aggregating to a total claim of ₹1,70,23,145/-.

(v) The Operational Creditor has denied the Corporate Debtor's objection regarding interest and submits that it is a registered Micro and Small Enterprise under the MSMED Act, 2006. It is contended that the Corporate Debtor accepted the goods supplied without raising any objection within the statutory period and, therefore, the Operational Creditor is entitled to interest under Sections 15 and 16 of the MSMED Act. According to the Operational Creditor, the statute provides for compound interest at three times the bank rate notified by the RBI; therefore, the interest claimed is legally

recoverable irrespective of any separate contractual stipulation between the parties.

(vi) The Applicant denies the contention that the Section 9 Application lacks details substantiating the unpaid operational debt. It is submitted that the GST invoices, corresponding E-Way Bills, and GST Forms are annexed as Annexure A-7 to the Application, while the Respondent's ledger account for the period from 01.12.2019 to 31.03.2022, reflecting invoice-wise details and payment status, has been annexed as Annexure A-16 to the Application. It is further submitted that the Operational Creditor has duly discharged the GST on the outstanding invoices and the Respondent has availed the corresponding input tax credit. Hence, the objection raised by the Respondent is stated to be frivolous and baseless.

(vii) The Operational Creditor has denied the existence of any genuine pre-existing dispute regarding quality of goods. The emails relied upon by the Corporate Debtor do not establish any real dispute, particularly when the Corporate Debtor continued making payments thereafter and made its last payment on 25.01.2022. The goods supplied were accepted by the Corporate Debtor and were never returned. Despite repeated demands through emails dated 08.11.2021 and 09.11.2021 and a personal meeting dated 20.11.2021, the Corporate Debtor neither cleared the outstanding dues nor returned the goods. Reliance is placed on ***Mukesh Agarwal v. RQS Engineering Pvt. Ltd., 2019 SCC OnLine NCLAT***

586, wherein the Hon'ble NCLAT observed that where payments or post-dated cheques are issued subsequent to the alleged dispute, such conduct may negate the plea of a genuine pre-existing dispute. The Operational Creditor has also distinguished the judgments relied upon by the Corporate Debtor by contending that the facts of those cases are materially different from the present matter.

(viii) The Operational Creditor has denied the contention that the demand notice was not served upon the Corporate Debtor. The demand notice dated 30.09.2022 was served both through Speed Post and through email on the registered email address of the Corporate Debtor as available on the MCA portal. Reliance is placed upon the postal tracking report showing delivery on 17.10.2022. Reliance is further placed on ***Indrani Saha v. B.K. Podder Printing Pvt. Ltd., CP (IB) No. 140/KB/2020***, wherein the Kolkata Bench of the Tribunal held that service of a demand notice on the email address registered with the Registrar of Companies constitutes valid service upon the Corporate Debtor.

(ix) The Operational Creditor has denied the allegation that inconsistent dates of default have been mentioned. It is submitted that for the purpose of the present proceedings, the relevant date of default is 25.01.2022, being the date of the last payment made by the Corporate Debtor. In support of its contention that the defence raised by the Corporate Debtor is illusory, reliance is placed on ***Henan Boom Gelatin Co. Ltd. v. Sunil Healthcare Ltd., Company Appeal (AT) (Ins.) No. 256 of 2017***, wherein the Hon'ble NCLAT has

held that the pre-existing dispute which may be ground to thwart an Application under Section 9 has to be a real dispute, a conflict or controversy; a conflict of claims or rights should be apparent from the reply as contemplated by Section 8(2). The Corporate Debtor is not to raise a bogey of disputes, but there has to be a real, substantial dispute. It is true that the Adjudicating Authority has to see the reply and the contents therein and has not to enter into adjudication of the dispute.

(x) The Operational Creditor has denied that pendency of proceedings before the Micro and Small Enterprises Facilitation Council constitutes a pre-existing dispute within the meaning of Sections 5(6) and 8(2) of the Code. The proceedings before the MSEFC were initiated by the Operational Creditor for recovery of its dues and delayed payment interest and cannot be equated with a suit or arbitration proceeding evidencing a dispute regarding the debt. Reliance is placed upon ***iValue Advisors Pvt. Ltd. v. Srinagar Banihal Expressway Ltd., 2020 SCC OnLine NCLAT 522***, wherein the Hon'ble NCLAT held that pendency of proceedings before MSME authorities does not, by itself, establish a pre-existing dispute under the Code. Reliance is also placed upon ***Krishna Hi-Tech Infrastructure Pvt. Ltd. v. Bengal Shelter Housing Development Ltd., Company Appeal (AT) (Ins.) No. 1375 of 2022***, wherein the Hon'ble NCLAT observed that the defence raised by the Corporate Debtor must be examined to determine whether it is a genuine dispute or merely a moonshine defence. Further reliance is placed on

Consolidated Construction Consortium Ltd. v. Hitro Energy Solutions (P) Ltd., 2022 SCC OnLine SC 142, which has held that pursuing the matter before the MSME Facilitation Council under the MSME Act is not a bar to filing an Application u/s 9 of the Code; the proceedings before the Council are not in the nature of a dispute.

(xi) On the aforesaid grounds, the Operational Creditor has prayed for rejection of all objections raised by the Corporate Debtor and for admission of the present Application.

5. It is noted that the Operational Creditor filed its short written submissions *vide* Diary Nos. 02931/8 and 02931/12, while the Corporate Debtor filed its written submissions vide Diary Nos. 02931/6 and 02931/11. The Operational Creditor also filed a Compendium of Judgments *vide* Diary No. 02931/10, and the Corporate Debtor filed its Compendium of Judgments *vide* Diary Nos. 02931/7 and 02931/9.

ANALYSIS & FINDINGS:

6. We have heard the submissions made by the Learned Counsel of the Operational Creditor as well as the Corporate Debtor and have gone through the material available on record carefully, along with the extant provisions of the Code and the settled position of law on the subject issue.

7. The present Application has been filed by the Operational Creditor under Section 9 of the Code for initiation of CIRP against the Corporate Debtor. The following issues arise for consideration before this Adjudicating Authority:

(i) Whether the present Application is barred by Section 10A of the Insolvency and Bankruptcy Code, 2016?

(ii) Whether there was a pre-existing dispute between the parties prior to the issuance of the Demand Notice under Section 8 of the Code?

The above issues are considered hereunder.

8. Issue No.(i): Whether the present Application is barred by Section 10A of the Insolvency and Bankruptcy Code, 2016?

8.1 At this stage, it may be useful to have a look at Section 10A of IBC, which is as follows: –

> "***Section 10A***: *Suspension of initiation of corporate insolvency resolution process.*
> *10A. Notwithstanding anything contained in sections 7, 9 and 10, no application for initiation of corporate insolvency resolution process of a corporate debtor shall be filed, for any default arising on or after 25th March, 2020 for a period of six months or such further period, not exceeding one year from such date, as may be notified in this behalf:*
> *Provided that no application shall ever be filed for initiation of corporate insolvency resolution process of a corporate debtor for the said default occurring during the said period.*
> *Explanation. – For the removal of doubts, it is hereby clarified that the provisions of this section shall not apply to any default committed under the said sections before 25th March, 2020.*"

8.2 A plain reading of Section 10A signifies that no Application/ proceedings under Sections 7, 9 and 10 can be initiated for any default in payment which is committed during the Section 10A period. Thus, what is essentially barred is initiation of CIRP proceedings when the Corporate Debtor commits any default during the Section 10A period. However, if the default is committed prior to the Section 10A period and continues in the Section 10A period, this statutory provision does not put any bar on the initiation of CIRP proceedings. The object and scope of Section 10A have been authoritatively explained by the Hon'ble Supreme Court in ***Ramesh***

Kymal v. Siemens Gamesa Renewable Power Pvt. Ltd., Civil Appeal No. 4050 of 2020, wherein it was held that the statutory embargo applies only to defaults arising on or after 25.03.2020, while defaults committed prior thereto remain unaffected. The legislative intent was to grant temporary protection to businesses facing disruption due to the COVID-19 pandemic and not to provide immunity in respect of pre-existing defaults.

8.3 In the present case, the Operational Creditor supplied goods under various invoices raised during the period 05.12.2019 to 28.02.2020, the last invoice being dated 28.02.2020 for ₹8,81,449/-. The ledger account placed on record further shows that as on 31.03.2020, the parties were maintaining a running account and an outstanding balance of ₹1,15,79,217 stood due from the Corporate Debtor. Thereafter, only intermittent payments aggregating to ₹9,00,000/- were made between 23.04.2020 and 25.01.2022, resulting in an outstanding balance of ₹1,06,79,217 as on 25.01.2022.

8.4 The principal contention of the Corporate Debtor is that the invoice dated 28.02.2020 carried a credit period of thirty days and, therefore, its due date fell after 25.03.2020. Proceeding on that basis, the Corporate Debtor seeks exclusion of the said invoice amount of ₹8,81,449/- from the outstanding balance of ₹1,06,79,217 and contends that the remaining amount would fall below the threshold prescribed under Section 4 of the Code. However, this contention cannot be accepted in the facts of the present case. The record does not disclose that the payments received from the Corporate Debtor were earmarked or appropriated towards any particular invoice. Rather, the ledger reflects a continuous running

account involving multiple supplies and multiple payments. The outstanding amount of ₹1,06,79,217 is not founded solely upon Invoice No. 240 dated 28.02.2020 but represents the cumulative balance outstanding in the running account after giving credit to all payments received till 25.01.2022. At this stage, a look at Section 60 of the Indian Contract Act, 1872, becomes useful, and the same is as follows:

> ***Section 60. Application of payment where debt to be discharged is not indicated***. – *Where the debtor has omitted to intimate, and there are no other circumstances indicating to which debt the payment is to be applied, the creditor may apply it at his discretion to any lawful debt actually due and payable to him from the debtor, whether its recovery is or is not barred by the law in force for the time being as to the limitations of suits.*

A plain reading of Section 60 of the Indian Contract Act, 1872, shows that if the debtor makes any payment without any appropriation, then the creditor can use his discretion to wipe out any of the remaining debt(s) which is/are due. The right of appropriation lies with the creditor if the debtor does not indicate in what manner the debt is to be discharged. In such circumstances, the creditor has a lot of scope for exercising his right in such a manner so as to put himself in the most advantageous position. In the present case, the record does not reveal any instruction by the Corporate Debtor directing that the subsequent payments be adjusted specifically against Invoice No. 240 dated 28.02.2020. Consequently, there is no basis to presume that the entire amount of ₹8,81,449/- under the said invoice continued to remain separately outstanding while all subsequent payments stood adjusted against earlier invoices.

8.5 More importantly, even according to the ledger relied upon by both parties, the outstanding balance as on 31.03.2020 stood at ₹1,15,79,217. After accounting for subsequent payments aggregating to ₹9,00,000/- received between 23.04.2020 and 25.01.2022, the balance stood reduced to ₹1,06,79,217. Thus, the debt reflected in the running account had already crossed the statutory threshold and continued to remain outstanding. The Corporate Debtor's attempt to isolate a single invoice dated 28.02.2020 and mechanically deduct its value from the closing balance overlooks the nature of the transactions between the parties, the running account maintained between them, and the principles governing appropriation of payments under Section 60 of the Indian Contract Act, 1872.

8.6 The Operational Creditor has further claimed interest under Sections 15 and 16 of the MSMED Act, 2006 and relied upon the judgment of the Hon'ble NCLAT in ***Beetel Teletech Ltd. v. Arcelia IT Services Pvt. Ltd.*** in support of its contention that interest accruing on a pre-Section 10A default can be taken into account while examining the threshold requirement. However, in view of the findings recorded hereinabove that the principal outstanding itself exceeded the statutory threshold, this Adjudicating Authority does not consider it necessary to return any conclusive finding on the admissibility of the interest component.

8.7 In view of the foregoing discussion, this Adjudicating Authority is of the considered view that the outstanding operational debt arose from a running account maintained between the parties and cannot be dissected invoice-wise in the manner suggested by the Corporate Debtor. The debt

reflected in the ledger account had already crossed the statutory threshold prior to the commencement of the Section 10A period and continued to remain outstanding thereafter. Consequently, the objection that the present Application is barred by Section 10A of the Code is devoid of any merit.

9. Issue no. (ii) Whether there was a pre-existing dispute between the parties prior to the issuance of the Demand Notice under Section 8 of the Code?

9.1 The Corporate Debtor has opposed the present Application on the ground that disputes regarding the quality of goods supplied by the Operational Creditor and delay in supply existed much prior to the issuance of the demand notice. In support thereof, reliance has been placed upon email correspondence dated 10.11.2021 addressed by the Corporate Debtor to the Operational Creditor.

9.2 In *Philips India Limited v. Goodwill Hospital & Research Centre Ltd.*, *Company Appeal (AT) (Insolvency) No. 14 of 2017*, decided on 31.05.2017, the Hon'ble NCLAT upheld the rejection of a Section 9 Application where the Corporate Debtor had raised specific allegations concerning deficiencies in maintenance services and resulting losses prior to the demand notice. The Hon'ble Supreme Court in *Mobilox Innovations Private Limited v. Kirusa Software Private Limited*, *(2018) 1 SCC 353*, has held that while considering an Application under Section 9 of the Code, the Adjudicating Authority is only required to examine whether there exists a real dispute requiring further investigation and that the dispute is not a patently feeble legal argument or an assertion unsupported by evidence.

The Adjudicating Authority is not required to enter upon an adjudication of the merits of such dispute.

9.3 In the present case, the email dated 10.11.2021, which admittedly precedes the demand notice, records allegations that the quality of material supplied by the Operational Creditor was not in accordance with the agreed terms, that supplies were frequently delayed, and that the Corporate Debtor had suffered financial losses, customer dissatisfaction, reduction in business and reputational harm on account thereof. The Corporate Debtor further asserted that these issues had been repeatedly raised earlier through telephonic communications and called upon the Operational Creditor to visit its office for settlement of losses, failing which legal proceedings would be pursued. The relevant email dated 10.11.2021, relied upon by the Corporate Debtor and forming part of the record, annexed as Annexure A-18 to the Application, has been reproduced hereinbelow:

roohighai@indiannutrition.in <roohighai@indiannutrition.in > 10 November 2021 at 13:15
To: "dkherada@gmail.com " <dkherada@gmail.com >
Cc: Indian Administration <admin@indiannutrition.in >

Dear Sir,

We regret to inform you that we are very disappointed with your services lately, for which we made telephonic conversations serval times. We have been in a business relationship over seven to eight years.

We have been apprise that the quality of material was not delivered as agreed under the purchase terms as well as delivery of goods received from you generally beyond the delivery date. This results not only affecting us financially but also customer dissatisfaction due to very poor quality of material and delay servicing them or non availability of the goods on time. Poor quality of goods as well as delay in providing goods to the ultimate buyer we had to bear huge loss of revenue, reduction in number of customers and bad reputation in the market.

We raised these issue serval times and also communicate over telephone in the regards but there are no any serious action had been taken at your end.

Due to low quality and late supply of material our cost of production goes very high as labuor and other technical staff got idle that increase various fix expenditures tremendously and our business performance trend goes day by day in decline mode.

Kindly visit the office premises after 20th November for the settlement of our losses or we also pursue legally.

Thanks & Regards,
Roohi Ghal
Manager Finance
Indian Nutrition Pvt. Ltd.

9.4 Though the Operational Creditor has disputed the correctness of the allegations and contended that the said email is vague and unsupported by documentary evidence, this Adjudicating Authority is not expected, at the stage of admission of an Application under Section 9, to conduct a detailed examination into the veracity of the rival claims. The question is not whether the defence is likely to succeed, but whether there existed a genuine dispute prior to issuance of the demand notice.

9.5 In the considered view of this Adjudicating Authority, the contents of the aforesaid email cannot be brushed aside as a mere bluster or moonshine defence. The allegations pertain directly to the quality of goods supplied and the performance of contractual obligations between the parties. The correspondence was exchanged nearly ten months prior to the issuance of the demand notice and, therefore, demonstrates that disputes concerning the underlying transactions had arisen before initiation of proceedings under the Code. Once the existence of a plausible pre-existing dispute is demonstrated, the remedy under Section 9 of the Code cannot be invoked as a substitute for adjudication of such disputed claims. The disputes raised by the Corporate Debtor would necessarily require examination of evidence and determination of factual issues, which falls

outside the limited jurisdiction exercised by this Adjudicating Authority while considering an Application under Section 9 of the Code.

9.6 Accordingly, applying the test laid down by the Hon'ble NCLAT in *Philips India Limited* (supra) and the Hon'ble Supreme Court in *Mobilox Innovations Private Limited v. Kirusa Software Private Limited* (supra), this Adjudicating Authority is satisfied that a pre-existing dispute existed between the parties before the issuance of the demand notice.

CONCLUSION:

10. For the aforesaid reasons and circumstances of the case, we are of the considered opinion that the Operational Creditor failed to comply with the mandatory conditions prescribed under Section 9 of the Code to initiate CIRP against the Corporate Debtor as sought for.

11. In the result, **CP (IB) No.371/CHD/PB/2022** is hereby rejected and disposed of. We make it clear that this Order will not come in the way of the Applicant to invoke any other remedy available under any law for the grievance(s) raised in this Application. No order as to costs.

Sd/-
SHISHIR AGARWAL
Member (Technical)

Sd/-
KHETRABASI BISWAL
Member (Judicial)

Gitesh