NATIONAL COMPANY LAW APPELLATE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

Company Appeal (AT) (Insolvency) No. 1612 of 2023

[Arising out of the Impugned Order dated 13.10.2023 passed by the National Company Law Tribunal, New Delhi Bench-VI in C.P.(IB) No. 117/(ND)/2023]

In the matter of:

Vave India Energy Solutions Private Limited
Having its registered office address:
B1-1081, Vasant Kunj
New Delhi-110070.
Corporate office at:
498, Ground Floor
Udyog Vihar-Phase-III, Gurugram.

... Appellant/Operational Creditor

Versus

Eastman Auto & Power Limited
Having its registered office address:
Flat No. 101, 1st Floor
Naraina Industrial Area,
Phase-I, New Delhi-110028.
Corporate office at:
572, Udyog Vihar Phase-V
Sector-19, Gurugram,
Haryana-122016

... Respondent/Corporate Debtor

Present:

For Appellant	**:**	Mr. R. Jawahar Lal and Mr. Sayyam Maheshwari, Advocates.
For Respondents	**:**	Mr. Gaurav H. Sethi, Mr. Rahul Kapoor, Mr. Rahul Pawar, Mr. Kartik Nagpal, Advocates.

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

[Per: Ajai Das Mehrotra, Member (Technical)]

The present appeal has been filed by Vave India Energy Solutions Private Limited (hereinafter referred to as the **'Operational Creditor'**) against the

impugned order passed by the Ld. NCLT, New Delhi in CP (IB) No. 117/(ND)/2023 dated 13.10.2023 wherein the Ld. NCLT had rejected the application filed by the Operational Creditor under Section 9 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as the **'IBC, 2016'**) on the ground of pre-existing dispute.

2. The brief facts of this case as noted in the order dated 13.10.2023 of Ld. NCLT are as under:

i. The application under Section 9 was filed by the Operational Creditor seeking initiation of Corporate Insolvency Resolution Process (hereinafter referred to as the **'CIRP'**) of Eastman Auto & Power Limited (hereinafter referred to as the **'Corporate Debtor'**) for the alleged default on the part of the Corporate Debtor in clearing the debt of Rs. 1,02,70,985/- along with interest @ 18% per annum.

ii. It is the submission of the Operational Creditor that the Operational Creditor and the Corporate Debtor had entered into an Agreement dated 02.01.2018 for supply of inverter batteries of different models and capacity by the Corporate Debtor to the Operational Creditor.

iii. In terms of said agreement, the Operational Creditor used to place purchase orders on the Corporate Debtor for inverter batteries to be manufactured and supplied by the Corporate Debtor. On the basis of the purchase orders issued by the Operational Creditor, the Corporate Debtor would manufacture and supply the inverter batteries to the Operational Creditor and raise an invoice in this regard. On receipt of the inverter batteries, the Operational Creditor used to make payment with regard to the same.

iv. The Operational Creditor submitted that it started receiving complaints in respect of the power backup of the inverter batteries manufactured and supplied by the Corporate Debtor. The Operational Creditor sent an email in 2018 addressed to the Corporate Debtor giving details of the defects found in the inverter batteries manufactured and supplied by the Corporate Debtor. Thereafter, several correspondences were exchanged and discussions were held between the Corporate Debtor and the Operational Creditor.

v. On 12.08.2019, the Corporate Debtor offered the issue of a credit note promising monthly payments of Rs. 10 lakhs per month, in lieu of the defective inverter batteries. The Corporate Debtor acknowledged its liability to pay for defective 2697 batteries but failed to pay the admitted acknowledged amount of Rs. 1,02,70,985/- under the credit note.

vi. The Corporate Debtor sent an email dated 08.12.2022 addressed to the Operational Creditor stating that credit note was obtained under economic coercion and that the warranty obligations for the batteries had already expired.

vii. Subsequently, on 28.12.2022, a notice under Section 8 of the IBC, 2016 was issued by the Operational Creditor to the Corporate Debtor.

viii. Taking note of email dated 08.12.2022 issued prior to the notice under Section 8, the Ld. NCLT rejected the application under Section 9 of the IBC, 2016 on the ground of pre-existing dispute.

3. In his oral and written submissions, the Appellant/Operational Creditor, has submitted as under:

i. The disputes *inter-se* parties with respect to the defective batteries were amicably resolved and recorded in email dated 12.08.2019 and minutes of meeting dated 23.09.2019 and only thereafter, the credit note dated 07.11.2019

for Rs.1,02,70,985/- was issued by the Respondent/Corporate Debtor, accepting defects in batteries supplied by them, which were within the warranty period.

ii. The dispute existing prior to coming to existence of the operational debt stood resolved, hence should not be basis for dismissal of the application under Section 9. It is only three years after issuing the credit note that email dated 08.12.2022 was sent by the Corporate Debtor to the Operational Creditor alleging coercion in issue of credit note.

iii. The Respondent did not produce any contemporaneous document to demonstrate that the credit note was issued under coercion. The Appellant had been continuously following up with the Respondent through emails dated 18.11.2022 and 01.12.2022 and it was only on 08.12.2022 that the Respondent for the first time raised the defence of coercion.

iv. The Appellant denied that any coercion was used and denied that the issue of non-lifting of 10,000 batteries was reason for issue of credit note. The Appellant denied the Respondent's plea that since the Appellant allegedly did not lift 10,000 batteries, the Respondent was coerced into issuing the credit note.

v. The Ld. Counsel for the Appellant relied upon the following judgments to state that the Ld. NCLT was required to see whether the dispute is genuine or is patently feeble legal argument, as it was important to separate the grain from the chaff and to reject a defence which is a mere bluster:

- *Mobilox Innovations Pvt. Ltd. vs. Kirusa Software Pvt. Ltd. [(2018) 1 SCC 353] (Para 51);*

- *Saraswati Wire and Cable Industries vs. Mohammad Moinuddin Khan & Ors. [MANU/SC/1653/2025] (Para 15, 16 & 19);*
- *Henan Boom Gelatin Co. Ltd. vs. Sunil Healthcare Limited [(2021) SCC OnLine NCLAT 5505] (Para 23)* and
- *Deepak Modi vs. Shalfeyo Industries Pvt. Ltd. & Ors. [(2023) SCC OnLine NCLAT 169] (Para 13).*

4. The Ld. Counsel for the Respondent in his oral and written submissions stated as under:

i. The Respondent is a leading battery manufacturing company and net profit of the company is around Rs. 26 crores and net worth is around Rs. 56 crores.

ii. It is submitted that the Respondent company is fully solvent and is competent to pay off any dues that it is legally bound to pay.

iii. The Respondent was served with the demand notice on 28.12.2022 under Section 8 of the IBC, 2016 which was duly replied by the Respondent on 07.01.2023.

iv. There was a pre-existing dispute between the Appellant and the Respondent, which was clearly brought out in the email dated 08.12.2022, prior to the issue of demand notice.

v. The fact of a pre-existing dispute prior to the issue of notice under Section 8 of IBC, 2016 makes the petition ineligible for admission under Section 9 on this ground. The Respondent relied upon the following judgments in this regard:

- *Ruchira Green Earth Private Limited, though its authorized Representative Mr. Para v. KLB Komaki Private Limited,* reported in *2025 SCC OnLine NCLAT 1256 (Para 22 & 23);*

- *Mobilox Innovative Private Limited v. Kirusa Software Private Limited,* reported in *(2018) 1 SCC 353 (Para 40, 45 & 51);*
- *M/S S.S. Engineers v. Hindustan Petroleum Corporation Limited & Ors., Civil Appeal No. 4583 of 2022 (Para 31 & 32).*

vi. The Respondent also submitted that a claim arising out of warranty is not operational debt. The claim is not arising out sale of goods. There were two separate agreements with the Operational Creditor relating to contract manufacture of diverse types of batteries and a separate legal warranty agreement. The Appellant relied upon the judgment in the case of *Rajratan Babulal Agarwal v. Solartex India Private Limited and Others,* reported in *(2023) 1 SCC 115* and stated that this matter is clearly regarding breach of warranty which is a matter of civil trial and cannot be treated as a part of contract of sale or manufacturing.

vii. The Respondent had issued arbitration notice in January 16, 2023 to resolve outstanding disputes between the parties and application under Section 9 was an attempt to circumvent the arbitration process.

viii. All the contentions of the Appellant raised in the present appeal have already been dealt by the Ld. NCLT in the impugned order and petition under Section 9 was rejected on the valid grounds of pre-existing dispute. The Respondent prayed that the appeal may be dismissed.

5. We have heard the Ld. Counsels for the Appellant and the Respondent and have perused the records.

6. The Corporate Debtor was supplying batteries to the Operational Creditor. There is no dispute regarding this sale, other than the claims arising out of warranty. The Corporate Debtor had given credit note on 07.11.2019 of Rs.

1,02,70,985/-. Apparently, the Operational Creditor had not pursued the matter till November 2022, and is relying on the emails dated 18.11.2022 and 01.12.2022. No correspondence of the intervening period has been placed on record. On 08.12.2022, the Respondent, Corporate Debtor had written to the Appellant that credit note was given under coercion. The Respondent has submitted that they had manufactured 10,000 batteries which the Appellant had refused to lift, and under the economic stress, the Respondent was coerced into issuing the credit note. We note that the demand notice was issued subsequent to email dated 08.12.2022 where dispute was raised, and allegations of economic coercion was raised. The demand notice was issued on 28.12.2022, which was duly replied by the Corporate Debtor on 07.01.2023 in which the issue of pre-existing dispute was raised.

7. We have gone through the judgments *(para 3 (v) supra)* relied upon by the Appellant and we find that these judgments only lay down that the Tribunal should examine whether the dispute is genuine or *moonshine.* These judgments require that the Tribunal should see whether the dispute is real and genuine pre-existing dispute. The essence of these judgments quoted by the Appellant, has been captured in para 23 of the judgment in the case of *Henan Boom Gelatin Co. Ltd. vs. Sunil Healthcare Limited [(2021) SCC OnLine NCLAT 5505].* The para 23 is as under:

> ***"23.*** *The pre-existing dispute which may be ground to thwart an Application under Section 9 has to be 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 bogie of disputes but there has to be 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. He is only required to look into the substance of the pleading to find out whether there is a real dispute is decipherable from the reply."

8. In the present case, we note that the Corporate Debtor is in fact seller of goods and the Operational Creditor is the buyer who has continued to buy batteries from the Corporate Debtor and has continued to make payments. It is the submission of the Appellant that it started receiving complaints against the batteries sold by the Corporate Debtor, and it was against the warranty of the said batteries that the present claim has arisen. On the other hand, the Corporate Debtor states that they had manufactured 10,000 batteries for the Operational Creditor, which were not lifted by it and they were coerced into issuing the credit note in order to continue the supply of batteries. However, it is submitted that these batteries were not taken up by the Operational Creditor. It was in this background that the Corporate Debtor had sent the email dated 08.12.2022 and had stated that credit note was given under coercion. The Corporate Debtor had disputed its liability to make payment prior to issue of notice under Section 8 of IBC, 2016.

9. The guidelines provided by the following judgments is that the Adjudicating Authority is not required to go into the merits of the dispute, including the chance of success of either side and it is sufficient for rejection of the application under section 9 of IBC, 2016 if a genuine dispute exists prior to issue of notice under section 8 of IBC, 2016:

i. In *Ruchira Green Earth Private Limited, though its authorized Representative Mr. Para v. KLB Komaki Private Limited,* reported in *2025 SCC OnLine NCLAT 1256 (Para 22 & 23),* it was held as under:

> ***"22.*** *It is well settled that in Section 9 proceedings, the Adjudicating Authority is not supposed to enter into final adjudication with regard to existence of dispute between the parties regarding operational debt. What has to be looked into is whether the defence raises a dispute which needs further adjudication by a competent court. Disputes pertaining to contractual issues are not to be resolved in Section 9 proceedings. On hearing both the parties and perusing the documents/materials placed on record, we are satisfied that the Adjudicating Authority did not commit any error in finding the defence raised by the Corporate Debtor not to be one in the nature of being a patently feeble legal argument or being a hypothetical assertion unsupported by evidence.*
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> ***23.*** *The Adjudicating Authority therefore did not commit any error rejecting the Section 9 application after noticing the voluminous exchange of chat and email communications between the Corporate Debtor and Operational Creditor spread over a long period of time on the supply of defective goods, which clearly establishes that there were serious differences between them in the nature of real pre-existing disputes. If we apply the test laid down in Mobilox judgment supra to the facts of the present case it is clear that the defence raised by the Corporate Debtor in their reply filed in Section 9 application is not illusory or moonshine. For such disputed operational debt, Section 9 proceeding under IBC cannot be initiated at the instance of the Operational Creditor."*
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> (Emphasis supplied)

ii. In *Mobilox Innovations Pvt. Ltd. vs. Kirusa Software Pvt. Ltd. [(2018) 1 SCC 353] (Para 51),* the Hon'ble Supreme Court has held as under:

> ***"51.*** *It is clear, therefore, that once the operational creditor has filed an application, which is otherwise complete, the adjudicating authority must reject the application under Section 9(5)(i)(d) if notice of dispute has been received by the operational creditor or there is a record of dispute in the information utility. It is clear that such notice must bring to the notice of the operational creditor the "existence" of a dispute or the fact that a suit or arbitration proceeding relating to a dispute is pending between the parties. Therefore, all that the adjudicating authority is to see at this stage is whether there is a plausible contention which requires further*

investigation and that the "dispute" is not a patently feeble legal argument or an assertion of fact unsupported by evidence. It is important to separate the grain from the chaff and to reject a spurious defence which is mere bluster. However, in doing so, the Court does not need to be satisfied that the defence is likely to succeed. The Court does not at this stage examine the merits of the dispute except to the extent indicated above. So long as a dispute truly exists in fact and is not spurious, hypothetical or illusory, the adjudicating authority has to reject the application."

(Emphasis supplied)

iii. In the case of *Rajratan Babulal Agarwal v. Solartex India (P) Ltd., reported in (2023) 1 SCC 115,* the Hon'ble Supreme Court has held as under:

"74. Again, following what this Court held in Mobilox, we do not have to go to the extent of finding that the second respondent is likely to succeed. Still further, finding guidance from Mobilox, the examination of the merits need not transcend the limited extent which we have undertaken which is to find that the case of the second respondent is not to be brushed aside as spurious, hypothetical or illusory. We cannot find that the dispute as projected by the appellant on behalf of the second respondent does not exist. In the teeth of the e-mails which we have adverted to, and the inference sought to be drawn in particular as also the lab reports produced, no doubt, from the second respondent's labs, we cannot also find that the case of the corporate debtor is wholly unsupported by evidence. As to the acceptability of these materials and the weight to be attached to them, needless to say, we have not pronounced on the same.

75. When we speak about evidence, we must not overlook the law laid down in Mobilox that the court need not be satisfied that the defence is likely to succeed. The standard, in other words, with reference to which a case of a pre-existing dispute under IBC must be employed cannot be equated with even the principle of preponderance of probability which guides a civil court at the stage of finally decreeing a suit. Once this subtle distinction is not

overlooked, we would think that NCLAT has clearly erred in finding that there was no dispute within the meaning of the IBC."

(Emphasis supplied)

iv. In the case of *Sabarmati Gas Ltd. v. Shah Alloys Ltd.*, *reported in* (2023) 3 SCC 229, the Hon'ble Supreme Court has held as under:

"56. In the contextual situation it is only apposite to be remindful of the observation in Mobilox Innovations that in doing the act of separating the grain from chaff the Court need not to be satisfied that the defence is likely to succeed. It is enough that a dispute exists between the parties and in other words, what is to be seen is whether there was a plausible contention requiring investigation for the purpose of adjudication. Taking note of the nature of the dispute of the respondent as referred hereinbefore in respect of the claim made by the appellant, we do not find any reason to disagree with the concurrent findings of the Tribunals that there existed a "pre-existing dispute" between the parties before the receipt of demand notice under Section 8 IBC. In other words, the dismissal of the application under Section 9 IBC on the ground of "pre-existing dispute" cannot be held to be patently illegal or perverse. We also do not find any reason, in the facts and circumstances, to hold that the case set up by the respondent was a patently feeble legal argument. At any rate, we are not inclined to brush aside the case of the respondent as spurious.

57. We may hasten to add here that we shall not be understood to have held that the dispute set by the respondent regarding the dues is ultimately to be upheld. Certainly, when the expression "pre-existing dispute" is used it will only indicate the existence of a dispute prior to the receipt of a demand notice under Section 8 IBC, and the correctness or its truthfulness is a matter of evidence. In short, the respondent has succeeded in raising a dispute describable as "pre-existing dispute". In that view of the matter once we find that the Tribunals have rightfully held that there existed a "pre-existing dispute" between the parties there cannot be an order of remand of the matter to the Tribunal for reconsideration of Section 9 application under IBC."

(Emphasis supplied)

v. In *M/s S.S. Engineers v. Hindustan Petroleum Corporation Limited & Ors., Civil Appeal No. 4583 of 2022 (Para 31 & 32),* the Hon'ble Supreme Court has held as under:

> *"**31.** The NCLT, exercising powers under Section 7 or Section 9 of IBC, is not a debt collection forum. The IBC tackles and/or deals with insolvency and bankruptcy. It is not the object of the IBC that CIRP should be initiated to penalize solvent companies for non-payment of disputed dues claimed by an operational creditor.*
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> ***32.** There are noticeable differences in the IBC between the procedure of initiation of CIRP by a financial creditor and initiation of CIRP by an operational creditor. On a reading of Sections 8 and 9 of the IBC, it is patently clear that an Operational Creditor can only trigger the CIRP process, when there is an undisputed debt and a default in payment thereof. If the claim of an operational creditor is undisputed and the operational debt remains unpaid, CIRP must commence, for IBC does not countenance dishonesty or deliberate failure to repay the dues of an Operational Creditor. However, if the debt is disputed, the application of the Operational Creditor for initiation of CIRP must be dismissed."*
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> (Emphasis supplied)

10. We note that Respondent is a solvent company and in the present case, dispute is recorded prior to the issue of notice under Section 8 of the IBC and qualifies as a "pre-existing dispute". The dispute herein is not spurious defence or a mere bluster. As per the guideline provided by the Hon'ble Supreme Court in the above cited judgments, this Tribunal does not need to be satisfied that the Corporate Debtor is likely to succeed or give a finding on the merits of the dispute. It is sufficient that the pre-existing dispute is genuine and is raised prior to the issuance of notice under Section 8 of the IBC, 2016. Considering that the dispute was raised prior to the issuance of notice under Section 8 of the IBC, 2016, the Ld. NCLT has rightly rejected the application of the Operational

Creditor. We find no reason to interfere with the order of the Ld. NCLT. Accordingly, the appeal is dismissed. We restrain from making any order regarding cost. Pending application(s), if any, are also closed.

[Justice Yogesh Khanna]
Member (Judicial)

[Mr. Ajai Das Mehrotra]
Member (Technical)

Place: New Delhi
Dated: 17.03.2026
Ram N.