

**IN THE NATIONAL COMPANY LAW TRIBUNAL
COURT-V, NEW DELHI**

IB NO. 658/(ND)/2022

An Application under Section 9 of the Insolvency and Bankruptcy Code, 2016 read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016.

IN THE MATTER OF:

M/s Visiontech Automation

55, F.I.E. Ground Floor,
Patparganj Industrial Area,
Delhi- 110092

...Operational Creditor

Versus

M/s Dabur India Limited

Registered Office At- 8/3, Asaf Ali Road,
New Delhi DL 110002

...Corporate Debtor

Order Delivered on: 03.07.2024

CORAM:

SHRI MAHENDRA KHANDELWAL, HON'BLE MEMBER (JUDICIAL)

DR. SANJEEV RANJAN, HON'BLE MEMBER (TECHNICAL)

APPEARANCES:

For the Applicant : Mr. Vishal Sharma, Adv.

For the Respondent : R. Jawahar Lal and Anuj Garg, Advocates

ORDER

PER: MAHENDRA KHANDELWAL, MEMBER (JUDICIAL)

1. This is a Company Petition filed under Section 9 of the Insolvency and Bankruptcy Code, 2016 (***‘the Code’***) read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 by Mr. Manav Sharma, Partner and Authorized Representative of **M/s Visiontech Automation (*‘Operational Creditor’*)** duly authorized for initiation of Corporate Insolvency Resolution Process (***‘CIRP’***) against **M/s Dabur India Limited (*‘Corporate Debtor’*)**.
2. **M/s Visiontech Automation** (Operational Creditor), having its CIN-U32109DL2011PTC215464 and office at 55, F.I.E. Ground Floor, Patparganj Industrial Area, Delhi- 110092. **M/s Dabur India Limited** (Corporate Debtor) is a company registered under the Companies Act, 1956 [CIN-L24230D21975PLC007908], having its registered office at 8/3, Asaf Ali Road, New Delhi- 110002. The Corporate Debtor has Nominal Share Capital of Rs. 207,00,00,000/- and Paid-Up Share Capital of Rs. 176,78,56,483.
3. The present petition was filed on 21.07.2022 before this Adjudicating Authority by Mr. Manav Sharma, Partner and Authorized Representative of the Operational Creditor’s entity, duly authorized to initiate Corporate Insolvency Resolution Process (***‘CIRP’***) proceedings under Section 9 of the Insolvency and Bankruptcy Code, 2016 (***‘Code’***). The total amount claimed is Rs. 1,67,80,486.29 (Rupees One Crore Sixty-Seven Lacs Eight Thousand Four Hundred Eighty-Six and Twenty-Nine paise) as on alleged date of default i.e. 19.11.2021.
4. ***Submissions by the Ld. Counsel appearing on behalf of the Operational Creditor.***
 - a) The Operational Creditor is partnership firm which received the work order by way of Purchase Order & Service Order for supply & installation of electrical cables, lights and other related accessories, issued by respondent i.e. Dabur India Ltd. (DIL) specifying the scope of work and the total consideration for the

said work was estimated Rs. 4,65,78,673/-. They started the work by delivering supply material and deploying their manpower at the site situated in Assam. To be noted that the work as per the order assigned by the Corporate Debtor to the Operational Creditor was successfully done and the invoices were handed over to Corporate Debtor via their employee primarily Mr Vipin Kumar / Mr Durgesh Dwivedi, which is also mentioned in email dated 14.6.2021/22.06.2021 and Corporate Debtor assured to the Operational Creditor that the payment shall be done once the additional requirement of the reconciliation of material was done by Operational Creditor as per the given BOQ. The site was handed over to Corporate Debtor vide email dated 10.06.2021 after doing the Additional requirement of reconciliation work (Rs 3,00,000, accepted on email which is additional to PO amount) and demobilizing of the team. Operational Creditor has already submitted the invoices to Corporate Debtor before 10.06.2021 and even asked for the same after 4 days over an email dated 14.06.2021 (page 116 annexure A09 of petition against RA bill 1 to 7, NS items PO against email acceptance with Pending PO) against Credit Note given for additional amount over PO value after exhaust of PO amount. Another email which clearly stated that all the invoices has been submitted to Corporate Debtor and need payments against the same as demanded by OP on email dated 22.06.2021.

- b) After demobilizing the site on the request of Corporate Debtor over an email, Corporate Debtor maliciously raise a preplanned scenario to avoid payment and started negotiating in the value of bill/invoice raised. After requesting many times Corporate Debtor asked to change all the invoices & credit note from separate Part bills to single invoice. On 09th Nov 2021, after discussion with Mr. Durgesh Dwivedi, we had raised our final invoices including the Interest charges & demurrage charges.
- c) There was no issue of legal dispute or any dispute pertaining to short supply of material/any supply of poor quality of material/any pending work raised by the Corporate Debtor. All their respective invoices were duly submitted before

leaving the site. One of the employee of the Corporate Debtor, Mr. Pankaj Gupta tries to demand benefits from the officials of Operational Creditor and with the help of 3rd party Vendor damaged the already laid cable of the Operational Creditor against which Operational Creditor official filed an email dated 12.8.2020. But no action or any enquiry was ever being initiated by the Corporate Debtor against 3rd party vendor and Mr. Pankaj Gupta. Corporate Debtor not even raised any query or any objection when Operational Creditor intimated to the Corporate Debtor that work is over and Operational Creditor was vacating the site.

- d) As matter of fact Operational Creditor demanded their due payments after leaving the site on dated 14.06.2021. Rather than making the payments of the work done by Operational Creditor, Corporate Debtor maliciously raise a preplanned dispute issue, knowing the fact that the due amount is more than 1,00,00,000/- (one crore) and Operational Creditor can approach to NCLT for safeguarding the right of a MSME firm, because it is admitted fact that the Operational Creditor had handover the site on dated 10.06.2021 along with respective invoices. Operational Creditor vide email dated 02.03.2021 (Annexure A-12 page No. 124 of the rejoinder till 10.06.2021 page No. 108) continuously asked the Corporate Debtor whether any work is pending in terms to work order dated 28.5.2019 evidently, Corporate Debtor did not respond until Operational Creditor leave the site by demobilizing his Manpower with tools and tackles that proves the entire act of the Corporate Debtor as an act of fraud and deliberate malicious attempt to force the Operational Creditor to bound down to illegal terms of repayment of the work done.
- e) Operational Creditor since 10.06.2021 till 02.11.2021 was under continuous talk with the Corporate Debtor for releasing the payments and Corporate Debtor never raise any legal dispute. Further, as per special instruction mention in Point no. 6 of the PO that for *“The Invoice for supplies must be submitted in triplicate duly bearing the Supplier's GSTN & PAN, supported with the required documents/forms as specified in the order and showing Purchase*

Order no. Supplier code number ,description of material, HSN and /or SAC Code of Goods and services under supply , quantity, unit rate, tax , and value ,challan no. and date , LR number with date, Way bill No with date wherever applicable.”. Therefore, Operational Creditor to submit the invoices to the Corporate Debtor, must follows only the given details for valid invoicing. No other practice has been shared on email or Corporate Debtor has given any proof of declaring this explicit demand raised to the Operational Creditor for clearance of payment against the mentioned PO/SO in their reply to Operational Creditor Petition and further arguments.

- f) Accordingly, Corporate Debtor will be clearing the payment as per PO terms for payment i.e. “90% within 15 days from the receipt of material at site. 10% on submission PBG of 12 months after I&C or 18 months from the date of receipt of material at site, whichever is earlier”. Operational Creditor had many times shared the emails mentioning the interest to be charged against the delayed payment by Corporate Debtor against the Operational Creditor submitted invoices. Corporate Debtor never objected the interest charges mentioned in the emails.
- g) As per instruction mention in Point no. 6 of the PO that for Force majeure, it is stated that *“The Buyer shall be under no liability for failure to accept the deliveries of goods, if such acts of failure are due to any act of God, fire, earthquake, floods, or any natural calamities or transportation embargoes, civil commotion, riots, violence, acts of terrorists, state enemies, or any other similar reasons or circumstances beyond the control of the Buyer. Such occurrences shall be informed to Supplier.”* Accordingly, we are raising our IDLE manpower charges as Corporate Debtor has never informed Operational Creditor for any forced majeure conditions during CAA/NRC and COVID Lockdown period. And on asking the Corporate Debtor to release Operational Creditor because as Operational Creditor is small MSME vendor and can’t hold their team without any work on site, Corporate Debtor still insisted to hold the manpower site.

- h) Further, Corporate Debtor had changed the scope of work many times without intimating the Operational Creditor and had raised several approvals on email for additional material required at site apart from the PO material. Operational Creditor had taken email confirmation for the same time to time. Corporate Debtor confirm the Operational Creditor that separate PO will be given for these items. The same has been confirmed in the email dated 22.07.2021 (Annexure A10) by Mr. Durgesh Dwivedi.
- i) That all the harassment by the Respondent forced the petitioner to approach this Adjudicating Authority. The Applicant sent notice under Rule 5 of IBC, 2016 demanding outstanding sum of Rs. 1,67,80,486.29 (Rupees One Crore Sixty-Seven Lacs Eight Thousand Four Hundred Eighty-Six and Twenty-Nine paise) vide demand notice dated 19.11.2021 to the Corporate Debtor in accordance with Form 3 of the Insolvency and Bankruptcy Code (Application to the Adjudicating Authority Rules), 2016. The Corporate Debtor on 07.12.2021 gave vague reply to the demand notice where he wrongly denied the claim of the operational creditor (except for an amount of Rs. 47 lakhs approx.) without any evidence and ignoring the admission made vide various email by operational creditor. The statement of account proves that the commercial transaction started between the parties w.e.f. 2019 till 31.03.2022 and total outstanding payment pending on behalf of Corporate Debtor was sum of Rs. 1,67,80,486.29 after adjusting the payment received for the total period of work, which started in the financial year 2019-2020 till 2021-2022.

5. Submission by the Learned Counsel appearing on behalf of the Corporate Debtor

- a) In the present case, the Operational Creditor is claiming alleged dues under 5 Invoices and 2 Debit Notes, purportedly raised by the Operational Creditor for supply and installation of electrical cables, lights, etc. under two Purchase Orders and one Service Order. Out of the five invoices, four Invoices and the two Debit Notes are dated 09.11.2021 and the fifth Invoice is dated 11.11.2021. Demand Notice under Section 8 of the IBC issued by the

Operational Creditor on 19.11.2021. Hence, it is apparent that the Operational Creditor created these invoices a few days prior to the issue of Demand Notice dated 19.11.2021.

- b) It is not the case of the Operational Creditor that these invoices/debit notes raised on 09.11.2021 & 11.11.2021 were to be paid within 9 or 7 days as per the Purchase Orders/Service Orders (contract between the parties}, and since payment was not made by the due date, there is a default. On the contrary, the date of default is shown as the date of issue of Demand Notice in Column No. 6 of the Application filed before this Adjudicating Authority. Further, Corporate Debtor in its Reply to the Demand Notice denied the claims made by the Operational Creditor, disputed the invoices/ debit notes and brought to the notice of the Operational Creditor that there are pre-existing disputes, between the parties.
- c) In its Reply to the Demand Notice, Corporate Debtor has taken a specific objection as to the authenticity, veracity and non-receipt of the invoices/ debit notes alleged to have been raised between 09.11.2021 & 11.11.2023. Since Corporate Debtor never received the purported Invoices/ Debit Notes prior to the issue of the Demand Notice, in its Reply to the Demand Notice, the Corporate Debtor specifically requested the Operational Creditor to furnish proof of submission of the invoices/ debit notes by the Operational Creditor. Pertinently, the Operational Creditor neither controverted the objection raised by the Corporate Debtor nor has it furnished any proof to show that it had submitted/delivered the invoices/ debit notes to the Corporate Debtor, before issue of Demand Notice under Section 8 of the IBC.
- d) In fact, the Operational Creditor has admitted that it did not submit the invoices/ debit notes to the Corporate Debtor as in the present petition, as the Operational Creditor has specified the date of default as 19.11.2021, which is the date of the Demand Notice. Therefore, even as per Operational Creditor, before issue of the Demand Notice, there was no 'default'.

- e) The Operational Creditor has created four Invoices dated 09.11.2021 and one Invoice dated 11.11.2021. Interestingly, Operational Creditor has created one Debit Note for Rs. 18,80,567.88 dated 09.11.2021 towards "Interest Charges due to delay payment". To elaborate, four invoices were dated 09.11.2021 another on 11.11.2021, but according to the Operational Creditor the Corporate Debtor ought to have paid the five invoices on 09.11.2021, even though four invoices were raised on 09.11.2021 and the fifth invoice was raised only on 11.11.2021 i.e., payment ought to have been made on the same day or two days prior to even issue of invoice, and since the Corporate Debtor has failed to make payment, Debit Note towards interest of Rs. 18,80,567.88 was raised on 09.11.2021 and the failure of the Corporate Debtor to make such payment, constitutes 'default'. It is relevant to submit, the Operational Creditor has failed to show any document wherein the Corporate Debtor has agreed for payment of interest, due to delay in payment.
- f) However, the during the course of oral arguments the Advocate for the Operational Creditor referred to the invoices where it is mentioned that "payment must be made within 15 days from the date of tax invoice, otherwise 18% interest and penalty will be applicable". However, when the invoices created by Operational Creditor itself reads payment to be made within 15 days (even assuming the same is binding on the Corporate Debtor, even though admittedly such created invoices were never submitted/provided to the Corporate Debtor, there cannot be any 'default' or late payment charges before expiry of 15 days. Admittedly, the Operational Creditor has issued Section 8 Demand Notice on 19.11.2021 i.e. even before the expiry of 15 days.
- g) Further, the scope of work to be performed by the Operational Creditor under the Purchase Order No. 4501770914 dated 13.03.2019, Purchase Order No. 4501798879 dated 25.05.2019, and Service Order No. 4501799764 dated 28.05.2019 was not only to supply electrical equipment, but also installation and commissioning. It is relevant to note that time for completion was specified in the POs and the SO. In case of delay in supply/ installation by the

Operational Creditor, the parties had agreed for levy of penalty, at the rate specified in the POs and SO; therefore, it is clear that time is the essence of the contracts. Since inception, the performance of its obligations by the Operational Creditor was unsatisfactory/deficient, giving rise to multiple problems/inordinate delay, which was repeatedly raised by the Corporate Debtor with the Operational Creditor.

- h) Despite assurances, the Operational Creditor failed to arrange for deployment of adequate labour/ manpower to complete the work in time, resulting in significant delay in completion of site/plant of the Corporate Debtor. Emails exchanged between the parties, evidence of continuous delay by the Operational Creditor in completion of work, are filed by the Corporate Debtor along with its Reply to the present petition. Workmen deployed by the Operational Creditor at site were inadequate, untrained, unprofessional and did not follow the prescribed Standard Operating Procedure for completion of work, which resulted in poor and deficient performance of work by the Operational Creditor. Emails exchanged between the parties reflecting the deficiency/ poor performance of work by Operational Creditor are filed by the Corporate Debtor along with its Reply to the present petition.
- i) As per the 'Payment Terms' under the POs and SO, payment is subject to verification/ validation of date of receipt of goods/ services by the Corporate Debtor. As the scope of work to be performed by the Operational Creditor under the POs and SO was technical in nature, the procedure of verification/ validation of date of receipt of goods/ services adopted and agreed by the parties, and only subject to such verification payments were to be disbursed by the Corporate Debtor to the Operational Creditor.
- j) The invoices/debit notes, under which the Operational Creditor is claiming alleged dues in the present petition, undisputedly were created by the Operational Creditor on 09.11.2021 and 11.11.2021 without following the aforesaid procedure and without verification/ validation of the work by the Corporate Debtor or the Technical Auditor. Further, emails dated 19.10.2021

and 18.10.2021 exchanged between the parties and emails dated 11.11.2021 exchanged between the clearly reflects serious, real and genuine pre-existing disputes between the parties on all these aspects, prior to the issuance of the demand notice by the Operational Creditor. The same is also not disputed by the Operational Creditor.

- k) In the facts and circumstances of the present case, it is clear that the intention of the Operational Creditor by filing the present petition is only for recovery of alleged amounts, which are baseless, unjustified, and disputed by the Corporate Debtor. As such, the present petition is against the very spirit and purpose of the IBC; hence, the same is likely to be dismissed by this Adjudicating Authority.

Analysis & Findings

6. We have heard the Learned Counsels for the Operational Creditor and the Corporate Debtor, and further perused the averments made in the petition, reply filed by the Corporate Debtor, rejoinder filed by the Operational Creditor and written submissions presented by the Operational Creditor and the Corporate Debtor. Since the registered office of the respondent Corporate Debtor is in Delhi, this Tribunal is having territorial jurisdiction as the Adjudicating Authority in relation to prayer for initiation of Corporate Insolvency Resolution Process (CIRP) under Section 9 of The Insolvency and Bankruptcy Code, 2016, against the Corporate Debtor. Further, the present petition is filed within the period of limitation.
7. It is to be noted that the 'Operational Creditor' had sent a demand notice dated 19.11.2021 to the 'Corporate Debtor' under Section 8 of The Insolvency and Bankruptcy Code, 2016 for payment of outstanding dues worth Rs. 1,67,80,486.29 (Rupees One Crore Sixty-Seven Lacs Eight Thousand Four Hundred Eighty-Six and Twenty-Nine Paise only). Further, the present petition meets the pecuniary threshold limit of Rs. 1 Crore, as required under Section 4 of the Code.

8. In order to determine the admissibility of petition for initiating CIRP under Section 9 of the Code, the judgment of the Hon'ble Supreme Court in **Mobilox Innovations (P) Ltd. v. Kirusa Software (P) Ltd., (2018) 1 SCC 353** is to be taken into consideration. The said judgment makes it clear that in order to initiate CIRP proceedings under Section 9 of the Code, the Adjudicating Authority has to determine:
- a) Whether there is an 'Operational Debt' exceeding Rs. 1 Lakh (1 Crore, in case the petition is filed after 24.03.2020) as defined under Section 4 of the IBC?
 - b) Whether the documentary evidence furnished with the application shows that the aforesaid debt is due and payable and has not yet been paid?
 - c) Whether there is existence of a dispute between the parties or the record of the pendency of a suit or arbitration proceeding filed before the receipt of the demand notice if the unpaid operational debt in relation to such dispute?
9. In the first instance, to determine that whether the said amount claimed by the Operational Creditor would fall under the ambit of 'Operational Debt', it is pertinent to analyze the definition of 'Operational Debt' as mentioned under Section 5(21) of The Insolvency and Bankruptcy Code, 2016. Under said Section, the 'Operational Debt' is defined as:

“A claim in respect of the provision of goods or services including employment or a debt in respect of the payment of dues arising under any law for the time being in force and payable to the Central Government, any State Government or any local authority”.

While analyzing the present facts in the light of Section 5(21), the Operational Creditor and the Corporate Debtor had been into the business for the supply & installation of electrical cables, lights and other related accessories and the Corporate Debtor used to place the work order by way of Purchase Order &

Service Order with the Operational Creditor, from time to time and the Operational Creditor supplied the goods and manpower at site situated in Assam as per the purchase orders. It was asserted that the Corporate Debtor defaulted in making the payment to the Operational Creditor for which an action is preferred by the Operational Creditor before this Adjudicating Authority. The said Creditor claims the outstanding amount worth Rs. 1,67,80,486.29 (Rupees One Crore Sixty-Seven Lacs Eight Thousand Four Hundred Eighty-Six and Twenty-Nine Paise only) from the Corporate Debtor. Furthermore, on the appreciation of the transactional invoices, Bank Statements and the Ledger Account as maintained by the Operational Creditor, as annexed by the Operational Creditor, and placed before us, we are of the view that there has been a transaction between the said parties and that the Operational Creditor had supplied goods and services to the Corporate Debtor for which the Corporate Debtor has defaulted in making the payment. Also, the Corporate Debtor has not disputed the receipt of goods and services in question. Hence, this Adjudicating Authority is inclined to agree with the Operational Creditor that the debt claimed by the petitioner comes under the definition of 'Operational Debt' within the meaning of Section 5(21) of the Code.

- 10.** It is observed that as per the requirement of Section 8(2)(a) of the Code, the Corporate Debtor is required to bring into notice of the Operational Creditor, the existence of any dispute within 10 days of the receipt of the demand notice. In the present case, the Corporate Debtor has filed reply dated 07.12.2021 to the demand notice dated 19.11.2021 sent by the Operational Creditor to the Corporate Debtor. It is observed that the Corporate Debtor in the said reply has stated that there is a 'Pre-existing dispute' between the parties which has arisen before the receipt of demand notice sent by the Operational Creditor to the Corporate Debtor.
- 11.** In the instant case, the Corporate Debtor has raised an issue of pre-existing dispute claiming that there was delay and poor performance of work and the same was communicated by the Corporate Debtor to the Operational Creditor

through various emails which is placed on record as Annexure R1, R2 and R3 before this Adjudicating Authority. Therefore, it is pertinent to adjudicate upon the issue of dispute by this Adjudicating Authority as to whether there exists any 'Pre-Existing Dispute' as claimed by the Corporate Debtor.

12. In the judgment of **Mobilox Innovations Private Limited v. Kirusa Software Private Limited, (2018) 1 SCC 353**, the Hon'ble Supreme Court has held that *"an application under Section 9 of the Code is not maintainable and ought to be rejected on there being a "pre-existing dispute". The Supreme Court had held that 'so long as a dispute truly exists in fact and is not spurious, hypothetical or illusory, the Adjudicating Authority has to reject the application"*.

13. Ongoing through the records, it can be seen that the Corporate Debtor contends that there has been pre-existing dispute between the parties prior to the issuance of Demand Notice under Section 8. The Corporate Debtor in its reply dated 07.12.2021 to the Demand Notice, stated that they have raised pre-existing disputes with respect to delayed work, insufficient manpower at the site and the same had been communicated to the instant Applicant through various emails. Further, the Corporate Debtor also states that the invoices were never furnished before the Corporate Debtor. Therefore, in order to ascertain that whether there existed any pre-existing dispute between the parties, we deem it just to peruse the email communications and for the ready reference relevant extract of some of the emails is reproduced hereunder:

i. Email dated 21.08.2019: *"Dear Mr. Manav, Below mail is self-explanatory, your starting in Dabur is very poor! why did you not start the cable tray support work in RTP FF as you committed that your team will start this work from 19th, due to delay from your end we are unable to use that area.."*

ii. Email dated 10.08.2019: *"Pl. provide the work schedule on urgent. How you can complete project without any project schedule. Site job is not moving at all."*

Also we came to know that your site team even don't have crimping tools to do cable termination. Also deploy required manpower to do the job..”

iii. **Email dated 24.08.2019:** *“As discussed earlier, Please update us with your actual schedule. Your team at site is suffering with lesser resources and also unaware of work schedule. There is no progress at site till date.”*

iv. **Email dated 26.08.2019:** *“Tried to call you several times but your Mobile is switched off. Pl. call on urgent. Site work is not progressing at all. As per schedule no work is progressing at site. 1. RTP panel shifting & site positioning job need to be completed by 19th & 20Th pf Aug. But no work is progress. 2. Main Panel room panel shifting job to be completed by 19th. But job not started. Pl. update the status of Light fixture and lighting cables.”*

v. **Email dated 06.01.2020:** *“Even after repeated follow-up, till date lighting job in FG has not been started. High bay light in FG block need to be installed on urgent.”*

vi. **Email dated 08.02.2020:** *“Dear Mr. Manav & Visiontech team, till date you have not started any work in FG Warehouse. As per scheduler and commitment, work has to be started from 1st of Feb. You have also committed that manpower will get increased. At present only 14-15 manpower is at site from last 2 months. When will manpower will get increased. Pl. update on urgent as site is hampering due to delay in work.”*

vii. **Email dated 12.02.2020:** *“This response from your end is very disappointing though the site team is continuously following up. Why is this happening? Plz note that your company's performance is being monitored at the highest levels in our company and hence its reflecting very poorly.”*

14. Therefore, on perusal of the emails mentioned above and on perusal of emails dated 26.02.2020, 29.02.2020, 14.07.2020, 05.09.2020 and 08.12.2020 which is placed on record as Annexure- R1 of the reply, it is evident that there was

lack of manpower at the site and the work progress was very slow. Despite repeated reminders from the Respondent, the Applicant delayed in the work and did not increase the manpower at the site. Further, on perusal of emails dated 02.09.2019, 06.09.2019, 07.09.2019, 11.09.2019 and 12.09.2019 as placed on record as Annexure R-2 of the Reply, it is evident that despite repeated request from the Respondent, the Applicant was reluctant in sharing the consolidated project schedule with the Respondent.

15. Furthermore, the Respondent also informed the Applicant about the deficiency/ poor performance of work by the Applicant. The same has been communicated by the Respondent to Applicant multiple times through various emails, and the relevant extract of the said emails is reproduced hereunder:

- i. **Email dated 29.11.2019:** *“As highlighted many time that lots of cable tray structural supports and not straight, its up and down and not in straight line which is not acceptable at all. Pl. depute good quality fitter for the job who can do quality job.”*
- ii. **Email dated 02.07.2020:** *“... For last 1 month only 10 manpower is available at site and not a single experienced electrician is available as on date. You need to deployed manpower for cable laying and experienced electrician for cable glanding/ termination on urgent basis.”*
- iii. **Email dated 04.07.2020:** *“Pl. arrange for good electrician as in the current team not a single Electrician is available”*
- iv. **Email dated 08.08.2020:** *“Non availability of experienced & License holder Electrician has been highlighted many times. Till date not a single experienced & License holder Electrician is available at site.”*
- v. **Email dated 10.08.2020:** *“During inspection of cable laying job in the morning along with your supervisor, we found one of 3.5C x 300 sqmm cable core has been damaged. Pl. arrange to replace the same on urgent. If this core damaged cable has been get charged, there will have very big safety risk of person as*

well equipment. Core damaged cable has been cover up by putting insulation tape which is serious safety concern. In future if any such incident happens, immediately highlight the same instead of covering it up. This raise serious concern on laying of cable with proper safety and without any damage to cable”

- vi. **Email dated 10.08.2020:** *“Another incident of cable damaged happened today at around 3.45PM, due to non-adherence of SOP for cable laying job. Cable has been badly twisted during laying process. This has been shown to your supervisor Mr. Sahbaz. Laying was done by untrained person and they don’t know the procedure to open the cable. This raise serious concern on laying of cable without any damage to cable.”*

16. Therefore, the pre-existing dispute raised by the Corporate Debtor with respect to the delay in work, insufficient manpower provided by the Applicant, and poor performance of work, is genuine and stands substantiated. Hence, this Adjudicating Authority observes that there existed a genuine pre-existing dispute between the parties.

17. It is pertinent here to refer to the decision of Hon’ble Supreme Court in Re. Mobilox Innovations Private Ltd vs Kirusa Software Private Ltd (2018) 1 SCC 353, wherein, the Hon’ble Supreme Court was pleased to hold, inter alia, as follows:

*“24. 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.....

40. It is clear, therefore, that once the operational creditor has filed an application, which is otherwise complete, the adjudicating authority must reject the application under Section 9(5)(2)(d) if notice of dispute has been received by the operational creditor or there is a record of dispute in the information utility. It is clear that such notice must bring to the notice of the operational creditor the “existence” of a dispute or the fact that a suit or arbitration proceeding relating to a dispute is pending between the parties. Therefore, ***all that the adjudicating authority is to see at this stage is whether there is a plausible contention which requires further investigation and that the “dispute” is not a patently feeble legal argument or an assertion of fact unsupported by evidence. It is important to separate the grain from the chaff and to reject a spurious defence which is mere bluster. However, in doing so, the Court does not need to be satisfied that the defence is likely to succeed. The Court does not at this stage examine the merits of the dispute except to the extent indicated above. So long as a dispute truly exists in fact and is not spurious, hypothetical or illusory, the adjudicating authority has to reject the application.***”

In the present case, the Corporate Debtor has raised dispute as to delay in work, insufficient manpower provided by the Applicant, and poor performance of work through various email communications between the Operational Creditor and the Corporate Debtor. It is observed that all these disputes were raised by the Corporate Debtor much prior to the issuance of Demand Notice under Section 8

of the Code and subsequently, raised the dispute in reply dated 07.12.2021 to the Demand Notice dated 19.11.2021 issued by the Operational Creditor. On the basis of the above observations, it is observed that the dispute raised by the Corporate Debtor exists in fact and is not moonshine. Therefore, we are of the view that there exists pre-existing dispute between the Operational Creditor and the Corporate Debtor. Hence, the present Section 9 application is not admissible on the ground of existence of pre-existing dispute between the parties. Consequently, there exists 'no default' on the part of the Corporate Debtor.

18.In the light of the above, the instant application bearing **CP (IB) No. 658/ND/2022** filed by, **M/s Visiontech Automation**, (Operational Creditor), under section 9 of the Code read with rule 6(1) of the Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016 for initiating CIRP against **M/s Dabur India Limited** (Corporate Debtor) is liable to be dismissed and is, accordingly **dismissed**.

A certified copy of this order may be issued, if applied for, upon compliance with all requisite formalities.

Sd/-
(DR. SANJEEV RANJAN)
MEMBER (TECHNICAL)

Sd/-
(MAHENDRA KHANDELWAL)
MEMBER (JUDICIAL)