

DIVISION BENCH

ITEM NO.101

**NATIONAL COMPANY LAW TRIBUNAL
ALLAHABAD BENCH
PRAYAGRAJ**

CP (IB) No.486/ALD/2019

CORAM:

- 1. SHRI PRAVEEN GUPTA,
HON'BLE MEMBER (JUDICIAL)**
- 2. SHRI ASHISH VERMA,
HON'BLE MEMBER (TECHNICAL)**

Date of Order: 25th July, 2024

Attendance-Cum-Order Sheet of the Hearing.

NAME OF THE COMPANY	SRV TECHNO ENGINEERING PVT LTD V/S PURVANCHAL VIDYUT VITRAN NIGAM LTD
UNDER SECTION	9 IBC

COUNSEL APPEARED THROUGH PHYSICAL/ VIRTUAL HEARING:

NONE

: *For the parties*

ORDER

- 1.** This matter is arising out of an order dated 23.04.2024 passed by the Hon'ble NCLAT U/s 61 of the Code in the matter of CP (IB) No.486/ALD/2019.
- 2.** This Adjudicating Authority in terms of an order dated 12.10.2023 has dismissed the aforesaid CP (IB) No.486/ALD/2019 filed by the Operational Creditor U/s 9 of the Code, against which an Appeal was filed U/s 61 *vide* Company Appeal (AT) (Insolvency) No.1651 of 2023 and other IAs by the Operational Creditor namely 'SRV Techno Engineering Pvt. Ltd.'.
- 3.** The Hon'ble NCLAT in terms of aforesaid order has set aside the impugned order dated 12.10.2023 passed by this Adjudicating Authority. The operative part of the aforesaid order passed by the Hon'ble NCLAT in its para nos.60, 61, 62 and 63 are as under :-

"60. In view all above, we are unable to accept the logic of the Adjudicating Authority recorded in the Impugned Order regarding incorrect date. Once the date of the original application filed under Section 9 of the Code is treated as 26.11.2019, there is no question of any pre-existing dispute.

-Sd-

-Sd-

61. It is also noted that the Appellant fairly and consciously brought to the notice of the Adjudicating Authority therefore MA No. 02 of 2023 of correct outstanding amount of Rs. 1,76,89,935/- which was also incidentally confirmed by the award under MSME Act, 2006. The Adjudicating Authority should have taken into consideration these facts before passing the Impugned Order.

62. We also note that demand notice under Section 8 of the Code was issued on 03.09.2019 to the Respondent and no dispute was ever raised by the Respondent prior to issue of such demand notice. In fact, the Respondent chose not to reply to such demand notice.

63. In view of above detailed discussions, we find merit in the appeal. The appeal is allowed and we set aside the Impugned Order. No Costs. Interlocutory Application(s), if any, are Closed.”

4. In terms of the aforesaid order of the Hon’ble NCLAT, the Registry has listed this matter, which has come up for hearing today.
5. There is no representation today on behalf of either of the parties, we therefore deem it appropriate to issue notices to both the parties i.e. the Operational Creditor as well as to the Corporate Debtor.
6. Let notices be also issued through their learned counsels, who have earlier been representing in the aforesaid matter, when this was being heard by this Adjudicating Authority.
7. The matter is adjourned for 28th August, 2024 awaiting appearance by the aforesaid parties in the matter.

-Sd-
(Ashish Verma)
Member (Technical)

-Sd-
(Praveen Gupta)
Member (Judicial)

25th July, 2024

Kavya Prakash Srivastava
(Stenographer)