

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

**CP IB NO. 382/(ND)/2023**

*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:**

**GAURAV GUPTA  
SOLE PROPRIETOR OF AMBIKA TRADERS**  
5957/58, Basti Harphool Singh,  
Sadar Bazar, Delhi-110006

**...OPERATIONAL CREDITOR**

**Versus**

**M/S J V INDUSTRIES PRIVATE LIMITED**  
Khasra No. 29, Saboli Industrial Area  
Delhi, 110093.

**...CORPORATE DEBTOR**

**Order Delivered on: 07.06.2024**

**CORAM:**

**SHRI MAHENDRA KHANDELWAL, HON'BLE MEMBER (JUDICIAL)**  
**SHRI DR. SANJEEV RANJAN, HON'BLE MEMBER (TECHNICAL)**

**APPEARANCES:**

**For the Applicant** : Mr. Neeraj Gupta, Ms. Divya Gattani, Advs.  
**For the Respondent** : Mr. Agrim Arora, Adv.

**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. Gaurav Gupta, Sole Proprietor of **M/s Ambika Traders ('Operational Creditor')** for initiation of Corporate Insolvency Resolution Process (**'CIRP'**) against **M/s J V Industries Private Limited ('Corporate Debtor')**.

- 2. Ambika Traders** (Operational Creditor) is a Sole Proprietorship Firm owned by Mr. Gaurav Gupta, having its office at 5957/58, Basti Harphool Singh, Sadar Bazar, Delhi-110006 which is engaged in the supply/sale of Copper Scrap, Copper Wire, Copper Wire Scrap and Copper Ignots. **M/s J V Industries Private Limited** (Corporate Debtor) is a company registered under the Companies Act, 1956 [CIN- U74899DL1994PTC057081], having its registered office at 9/104 G/F KH NO. 2376/18768/2 60, Feet Road Vishwas Nagar, Near Shastri Gali, Shahdara, Delhi, India, 110032. The Corporate Debtor has Authorized Share Capital of Rs. 4,50,00,000/- (Four Crore Fifty Lakh) and Paid-Up Share Capital of Rs 3,95,43,110/- (Three Crore Ninety-Five Lakhs Forty-Three Thousand One Hundred Ten)
- 3.** The present Petition was filed on 21.06.2023 before this Adjudicating Authority by Mr. Gaurav Gupta, Sole Proprietor of M/s Abmika Traders to initiate Corporate Insolvency Resolution Process (**“CIRP”**) proceedings under Section 9 of the Insolvency and Bankruptcy Code, 2016 (**“Code’**). The total amount of Operational Debt claimed is Rs. 10,34,58,416.83 (Rupees Ten Crore Thirty-Four Lakhs Fifty-Eight Thousand Four Hundred Sixteen and Eighty-Three Paise Only) including Interest. The date of default is 02.08.2021.
- 4. *The details of transactions leading to the filing of this Application as averred by the Operational Creditor/Applicant in the application are as follows:***
- a) That the Operational Creditor i.e., Ambika Traders deals in supply/sale of Copper Scrap, Copper Wire, Copper Wire Scrap and Copper Ignots. The Corporate Debtor i.e., M/s JV Industries Pvt. Ltd. engaged in the business of producing wires and cables, approached the Applicant in January 2020 and had placed oral purchase orders with the Applicant from time to time for supply of copper scrap. The Supply was made to their shipping address at E-530-531, RIICO Industrial Area, Chopanki, Bhiwadi, Rajasthan. Since 16.01.2021, the Corporate Debtor regularly issued invoices and raised E-way Bills to the Corporate Debtor against the Supplies. Accordingly, the Corporate Debtor has to make payments within 15 days from the date of

invoices and regular payments were made by the Corporate Debtor. Therefore, the Applicant maintained running account of the CD.

- b) But after 02.08.2021, no further payments were made by the Corporate Debtor. The Applicant has provided various extensions to the Corporate Debtor for making the outstanding payments nevertheless payments were made by the Corporate Debtor.
- c) Thus, the Applicant was constrained to issue a Demand Notice under Section 8 of the Insolvency and Bankruptcy Code, 2016 read with the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016, to the Corporate Debtor on 14.11.2022 calling upon the Corporate Debtor to pay unconditionally the unpaid operational dues of Rs. 7,78,50,827/-.
- d) The Corporate Debtor has sent a sham reply dated 23.11.2022 to Section 8 Demand notice vide Form 3 and failed to make payment. The Corporate Debtor has only asserted a moonshine defense of Pre-existing Dispute without any material in it. Wherein they asserted that the Applicant Operational Creditor has defaulted in making payment of goods and Service Tax (GST) to the Government
- e) Further, it is noteworthy to mention that till date the Corporate Debtor has never disputed on the quality of product supplied to them nor even the amount of alleged debt before the issuance of Demand notice.
- f) The Applicant to substantiate its claim of Operational Debt has placed on record the Copy of Invoices/E-way Bills, Demand Notice dated 14.11.2022 along with Reply to demand notice dated 23.11.2022, Ledger Account of Corporate Debtor, Account Statement of Kotak Mahindra Bank and ICICI Bank etc.
- g) Further, the Corporate Debtor has relied on **Subhash Chandra Goyal Sole Proprietor of Goyal Enterprises v. K.B. Ispat Private Limited, Company Appeal (AT) (Ins) No. 166 of 2022**, which is not relevant in the present case as in that matter the ITC which the Appellant has availed was from non-existent supplier and so the Corporate Debtor was conspicuous that it will disentitle the Corporate Debtor to avail credit from said transaction. But here the Corporate Debtor has already availed the ITC which is

reflected on GSTR-1 & GSTR-3B and has also been admitted by the Corporate Debtor in its reply dated 23.11.2022.

- h) The Applicant also contended that the bona-fide purchasers are allowed to avail the ITC even if their suppliers have defaulted in remitting tax to the Government. Further, the applicant also put forth the **Press Release dated 04.05.2018** of **Central Board of GST Council** wherein it was clearly stated that “in case where the supplier defaults in payment of tax, there shall not be any automatic reversal of input tax credit to the buyer unless an exceptional case can be made out. Instead, the recovery shall be made from the supplier first.” It is further clarified by the **GST Council** in its **28<sup>th</sup> Meeting dated 21.07.2018** that the recovery of the unpaid tax is to be done from defaulting supplier.
- i) The Applicant also asserted that though the Applicant was arrested for fraudulently availing/utilizing GST ITC vide arrest order dated 04.08.2021 issued by Ld. Special Judicial Magistrate, Meerut, but the said case is false & fabricated and also sub-judice. Therefore, the said investigations have no bearing on transactions carried out by the Applicant. Further, the Applicant has also made full GST payments for the invoices raised to the Corporate Debtor and the Corporate Debtor in turn completely availed the Input Tax Credit.
- j) The Corporate Debtor has held payment of outstanding operational dues merely on the assumption that the eligibility of the Corporate Debtor to avail the ITC may be questioned by the GST Department despite having knowledge that the GST paid by the Corporate Debtor to the Applicant has been duly deposited to the authorities. Furthermore, the Corporate Debtor's argument seems to be based on an undertaking given by the Applicant, which states that the Applicant would be liable to indemnify the Corporate Debtor in case of rejection or denial of ITC, including GST amount, interest, and penalty as may be imposed. Despite the fact that the Corporate Debtor has already availed the ITC and no rejection/denial by the GST Department till date, the Corporate Debtor has unlawfully withheld the outstanding operational dues.

- k) The Corporate Debtor has taken a sham and moonshine defense of Pre-existing Dispute. It is well settled principal that the Dispute must exist before the receipt of the Demand Notice and here in the present case Corporate Debtor has first raised the issue of dispute in reply to the demand notice and not any time before that. Therefore, the defense of Pre-existing Dispute cannot be sustained as per law.
- l) Further, no notice under Section 74/75 read with Section 16 of the Central Goods and Services Tax Act, 2017 has been received by the Corporate Debtor till date. The Corporate Debtor cannot withhold the rightful payment of Applicant merely on the assumption that Corporate Debtor may be questioned by GST Authorities.
- m) Hence, the Corporate Debtor is not able to establish any substantive argument of Pre-existing Dispute and also the undertaking given by the Applicant have no bearing on the present application as the Corporate Debtor has rightly claimed the ITC which is also an admitted fact in its reply dated 23.11.2022. Therefore, the Operational Creditor is entitled to the amount due and payable by the Corporate Debtor and the instant application is filed before this Adjudicating Authority for initiating a Corporate Insolvency Resolution Process under Section 9 of the Insolvency and Bankruptcy Code, 2016 is maintainable and liable to be admitted.

**5. Contentions asserted by the Learned Counsel appearing on behalf of the Corporate Debtor in reply to the present Application.**

- a) The Corporate Debtor is a company incorporated under the provisions of the Companies Act, 1956, and is engaged in business of producing wires and cables. The Corporate Debtor is in business relationship with the applicant for procurement of Copper Scrap. Between April, 2019 to August 2021, the Corporate Debtor has purchased goods worth Rs. 120,09,39,299/- from the Applicant which involves a principal amount of Rs. 101,76,60,508/- and GST amounting to Rs. 18,31,78,991/-.
- b) The Corporate Debtor has been making regular payments to applicant until 02.08.2021 and the same can be substantiated from the copy of ledger

account placed on record by the Applicant. Applicant asserted that the outstanding amount of Rs. 7,78,50,827/- was never paid by the Corporate Debtor.

- c) It is pertinent that Mr. Gaurav Gupta, Sole Proprietor of Applicant Company has been arrested vide order dated 04.08.2021, of Ld. Special Judicial Magistrate. The arrest was made for fraudulently availing/utilizing GST ITC amounting to Rs. 22.49 Cr. On the Invoices issued by 5 fake and bogus suppliers and passing the fraudulent ITC to the buyers.
- d) The Corporate Debtor believes that due to ongoing investigations against the Applicant, the ITC paid by the Corporate Debtor to the Applicant may be questioned by the GST Authorities in terms of Section 16(2)(c) of the Central/State Goods and Services Tax Act, 2017. Thus, the Corporate Debtor has duly paid the GST to the Applicant but the Applicant seems to have not deposited the same validly to the Government. So, there may be a risk of bearing burden of GST paid to Applicant with a possible demand of interest/penalty.
- e) Applicant has given an undertaking dated 20.02.2020 whereby the applicant has undertaken to take all necessary actions to ensure availment of ITC by the Respondent under GST Laws. The Applicant also undertook to indemnify the Corporate Debtor against all consequences or liability of any kind arising out of rejection/denial of ITC including GST amount, interest and penalty. It was further provided that Corporate Debtor would be entitled to take action against the applicant and also to recovery by adjustment from credit balance, in case terms break by the Applicant.
- f) The Corporate Debtor has not made payment to outstanding operational dues due to existence of Pre-existing Dispute between the Parties and the Applicant has moved the present application to recover the disputed sums from the Corporate Debtor. The Corporate Debtor relied on the decision of Hon'ble NCLAT in the case of Subhash Chandra Goyal Sole Proprietor of Goyal Enterprises v. K.B. Ispat Private Limited, Company Appeal (AT) (Ins) No. 166 of 2022.
- g) The roots of dispute come from the wrongful availment of ITC by the Applicant which is evident from the order dated 04.08.2023 of the Ld.

Special Judicial Magistrate. The Corporate Debtor has stopped the payment only after the order of Ld. Special Judicial Magistrate not before that. The order clearly states that “fraudulent availment of ITC amounting to Rs, 22.49 Cr. On the invoices issued by 05 fake/bogus suppliers discussed”

- h) The fraudulent ITC availed by the Respondent has been passed on by the Applicant /company to its buyers and the ITC availed by the Corporate Debtor may also be questioned by the Tax Authorities. In various cases tax demands have been raised on buyers where ITC availed by the seller is questioned. The notices are also issued under Section 74/75 read with Section 16 of the Central Goods & Services Tax Act, 2017 and/or respective State GST Act. Therefore, there is a possibility that ITC availed by the Respondent may also be questioned.
- i) Failure to abide by the GST Laws by the Applicant is a clear violation of contractual terms and conditions and undertaking dated 20.02.2022. the Applicant specifically undertook to ensure availment of ITC and indemnify the Corporate Debtor against all consequences and liability arising out of rejection/denial of ITC, GST Amount, Interest and Penalty. It is further covenanted between the parties that any breach of undertaking empowers the Corporate Debtor to action against the applicant including recovery through adjustment from Credit Balance of the Applicant. Hence, it is established that the outstanding amount is a disputed sum and cannot be recovered upon filing of Section 9 Application under the code.
- j) The Corporate Debtor has expressed its willingness to make payment to Applicant on furnishing of Bank guarantee of Rs. 18,31,78,891/- (Along with interest and penalty) by the applicant, to protect the interest of the respondent in the event of recovery from the Corporate Debtor.
- k) Therefore, the alleged outstanding operation debt is not due and payable in fact. Further the debt is disputed and the same is intimated to the Operational; Creditor. The Applicant only intends to recover the amount and treats this tribunal as Recovery Forum. Hence, the [present application lacks merit and obliged to be rejects on this sole ground itself.

## **Analysis & Findings**

6. We have heard the Learned Counsels for the Operational Creditor, 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 14.11.2022 to the 'Corporate Debtor' under Section 8 of The Insolvency and Bankruptcy Code, 2016 for payment of outstanding dues worth Rs. 7,78,50,827/- (Rupees Seven Crores Seventy-Eight Lakh Fifty Thousand Eight Hundred Twenty-Seven Only) along with interest. Further, the present petition meets the pecuniary threshold limit of Rs. 1 Crore, as required under Section 4 of the Code.
8. As per Section 9 of the Insolvency and Bankruptcy Code, 2016 and various judicial precedents, in order to initiate CIRP proceedings under Section 9 of the Code, the Adjudicating Authority has to determine that there must be an existence of operational debt, documentary evidence which shows that the aforesaid debt is due and payable and whether there exists a pre-existing dispute between the parties.
9. While deciding a petition under Section 9 of the IBC, 2016, one significant aspect to be examined is whether there was a pre-existing dispute between the parties. While considering this aspect we seek to rely on the judgment in **Mobilox Innovations (P) Ltd. v. Kirusa Software (P) Ltd. (2018) 1 SCC 353**, wherein the Supreme Court held as follows:

*“33. The scheme under Sections 8 and 9 of the Code, appears to be that an operational creditor, as defined, may, on the occurrence of a default (i.e. on non-payment of a debt, any part whereof has become due and payable and has not been repaid), deliver a demand notice of such unpaid operational debt or deliver the copy of an invoice demanding payment of*



*such amount to the corporate debtor in the form set out in Rule 5 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 read with Form 3 or 4, as the case may be [Section 8(1)]. Within a period of 10 days of the receipt of such demand notice or copy of invoice, the corporate debtor must bring to the notice of the operational creditor the existence of a dispute and/or the record of the pendency of a suit or arbitration proceeding filed before the receipt of such notice or invoice in relation to such dispute [Section 8(2)(a)]. What is important is that the existence of the dispute and/or the suit or arbitration proceeding must be pre-existing i.e. it must exist before the receipt of the demand notice or invoice, as the case may be. [...] It is only if, after the expiry of the period of the said 10 days, the operational creditor does not either receive payment from the corporate debtor or notice of dispute, that the operational creditor may trigger the insolvency process by filing an application before the adjudicating authority under Sections 9(1) and 9(2). [...] It may also reject the application if the notice of dispute has been received by the operational creditor or there is a record of dispute in the information utility [Section 9(5)(ii)(d)]. Section 9(5)(ii)(d) refers to the notice of an existing dispute that has so been received, as it must be read with Section 8(2)(a). Also, if any disciplinary proceeding is pending against any proposed resolution professional, the application may be rejected [Section 9(5)(ii)(e)].*

..

*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)(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.”*

**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 23.11.2022 to the demand notice dated 14.11.2022 sent by the Operational Creditor to the Corporate Debtor. It is observed that the Corporate Debtor in the said reply attempted to show 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.** The Corporate Debtor has raised an issue of pre-existing dispute claiming that the parties have entered into an undertaking dated 20.02.2022 wherein the applicant undertook to take all necessary actions to ensure availment of ITC by Corporate Debtor & to indemnify the Corporate Debtor in all consequences arising from rejection/denial of ITC and failure of Applicant to abide by GST laws by applicant is clear violation of undertaking, thus creating pre-existing dispute between the parties. 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.** The Corporate Debtor was in business relationship with Operational Creditor since January 2020 and the applicant constantly raised invoices from 16.01.2020 with the covenant that the Corporate Debtor would settle the invoices within 15 days of issuance. However, the Corporate Debtor ceased making payments after 02.08.2021, citing a pre-existing dispute as the reason for withholding further payments. In reply to demand notice, the Corporate Debtor asserted that the amount was withheld on account of pre-existing dispute and that the Operational Creditor has defaulted in making payments of Goods and Service Tax to the Government.
- 13.** As per the material available on record, it is evident that the Corporate Debtor has been making regular payments to the Operational Creditor for the supplies. Further, the parties admitted that the regular payments were made only till 02.08.2021. However, it is only after the order dated 04.08.2021 of Ld. Special Judicial Magistrate, Meerut, payment was stopped by the Corporate Debtor owing to the arrest of Mr. Gaurav Gupta for transacting with Fake/bogus invoices.

- 14.** The undertaking dated 20.02.2022, relied upon by the Corporate Debtor, categorically states that the Applicant/Operational Creditor will take all necessary actions to ensure the availment of ITC by the Corporate Debtor and to indemnify the CD in full against all consequences arising from the rejection/denial of ITC. The Corporate Debtor alleged that the outstanding operational debts are withheld as the Applicant has to indemnify the CD because the Applicant, Gaurav Gupta, has been arrested for availing ITC from bogus/fake suppliers and passing the same to various buyers. As a consequence of the order dated 04.08.2021, the ITC claimed by the Corporate Debtor can be questioned at any point during the investigation proceedings against the Operational Creditor. Since the undertaking dated 20.02.2022 entitles the Corporate Debtor to be indemnified by the Applicant in case the ITC is denied or rejected by the GST Authorities, the Corporate Debtor has reason to believe that the already availed ITC can be questioned at any point and has sought a Bank Guarantee for the availed ITC as a safeguard from the GST proceedings. Hence, the undertaking dated 20.02.2022 empowers the Corporate Debtor to claim the ITC amount from the Operational Creditor.
- 15.** Mr. Gaurav Gupta, Proprietor of the Operational Creditor has been arrested vide order dated 04.08.2021 of Ld. Special Judicial Magistrate, Meerut for fraudulently availing/utilizing GST ITC amounting to Rs. 22.49 Cr. on the invoices issued by 5 fake & bogus suppliers and passing the fraudulent ITC to the buyers. The Corporate Debtor contended that the present application is non-maintainable due to a pre-existing dispute, which arose when the order dated 04.08.2021 was passed against Mr. Gaurav Gupta by the Ld. Special Judicial Magistrate Meerut. The Corporate Debtor believes that the ITC they availed may also be questioned by the Tax Authorities. We are of the considered opinion that the proceedings against the Applicant before the Learned Special Judicial Magistrate, Meerut, can adversely affect the entire transaction involving the Operational Creditor, wherein the Corporate Debtor plays a significant role. This, in turn, will impact the ITC claimed by the Corporate Debtor.
- 16.** To Support its Argument the Corporate Debtor has relied on the judgment of Hon'ble NCLAT in **Subhash Chandra Goyal Sole Proprietor of Goyal Enterprises v. K.B. Ispat Private Limited, Company Appeal (AT) (Ins) No.**

**166 of 2022.** The Corporate debtor contended that the present application is liable to be dismissed as there exists a pre-existing dispute between the parties. The relevant paras quoted by the Corporate Debtor is reproduced below:

**“7.**

...

*e. The Respondent is worried that if the input tax credit which the Appellant has availed from the alleged non-existent supplier gets disallowed then the said credit being not available to the Appellant will in turn disentitle the Respondent Company/CD to avail the credit from the said transaction. The amount involved for the period from 01.04.2018 to 19.07.2019 towards inputs tax credit is to the tune of Rs. 59 lacs approx, which will get rejected on the purchases made from the Appellant to the tune of Rs. 3.3 Crore. As a result, the CD will have to burden with this liability to pay the entire tax to the extent of Rs. 59 lacs alongwith interest and penalty on the said amount.*

**13.** *We have heard ld. counsels for the parties and have analyzed the information provided by them and the relevant provisions of the Code and related law laid down by the Hon'ble Apex Court on the subject and as such record following observations:*

...

*e. As far as the outstanding of amount of invoice to be paid by CD is concerned amounting to Rs. 26,89,290/-, CD is conspicuous of its inputs tax credit of Rs. 59 lacs likely to get rejected on the purchase made from Appellant for a value of Rs. 3.3 Crore from 01.04.2018 to 19.07.2019 and this will be an additional liability to the CD to pay Rs. 59 lacs alongwith interest and penalty, if GST Department, Kolkata finally come to the conclusion that the transactions of the Appellant with other parties are proved to be non-genuine. Accordingly, as an abundant precaution, the CD has asked for a bank guarantee for the above amount with a requisite validity till its assessment by GST Department is over. The Appellant is not interested in providing the bank guarantee in spite of their mutual discussions in the month of May/June 2019 and even during the course of hearing was not willing to provide the bank guarantee. In the reply to the demand notice also, this is the issue of very deep disputes between the parties as the Appellant has purchased goods from suspicious source and will badly damage also the image of the CD. In the reply to the demand notice, it is categorically stated that out of total purchases of Rs. 3,89,87,276/- the CD has paid Rs. 3,62,97,986/- and the only amount outstanding is Rs. 26,89,290/- whereas in case of taking adverse stand or irregularity of the Appellant may result into a loss of input tax credit*

amounting to Rs. 59,47,211.62 with interest and penalty. All this reflects that there is a serious dispute between the Appellant and the CD.

...

l. It is very much clear that the amount is outstanding. But the amount is not due and payable in the law as is very much evident from the facts that one of the supplier of the Appellant has on the basis of intelligence input and investigation conducted by 'anti invasion' branch of the Commissionerate of GST has revealed that the concerned supplier has taken registration under GST Regime is non-existent and fictitious, resulting into perceived loss of more than two times of the outstanding amount loss to the CD without any mistake on the part of the CD. It has created a cumbersome situation and CD has asked for corresponding bank guarantees which has been refused by the Appellant and hence it has resulted into a dispute. So, it can be concluded that it is not meeting the criteria of either debt is due and payable in law or the Debt. must be undisputed which are the pre-requisite for the admission of case under Section 9 of the Code. The Appellant is not even meeting the criteria 'as enunciated in Section 9(5)(d) as no notice of dispute has been received by the Operational Creditor. The Operational Creditor has raised the issue with a dispute that the Appellant is not providing bank guarantee. The Appellant/OC has factually failed to communicate that there is no existence of dispute."

In **Subhash Chandra Goyal (Supra)**, the Corporate Debtor did not avail the Input Tax Credit due to the apprehension that if the Input Tax Credit, which the Operational Creditor availed from the alleged non-existent supplier, gets disallowed, then the said credit would not be available to the Appellant, thereby disentitling the Corporate Debtor from availing the said credit. In the present case, the arrest of the Operational Creditor can have an adverse impact on the Input Tax Credit claimed by the Corporate Debtor. Furthermore, after the arrest of the Operational Creditor, no payments were made by the Corporate Debtor, which can be substantiated with the ledger account. Therefore, the contention of the Corporate Debtor and the decision of the Hon'ble NCLAT in the matter of **Subhash Chandra Goyal (Supra)** can be relied upon in the facts of the present case. Hence, the Bench has no hesitation in concluding that there is a pre-existing dispute pending between the parties as alleged by the Corporate Debtor

**17.** The above referred communication shows the existence of a pre-existing dispute and this pre-existing dispute existed even before the notice dated 28.11.2019

under Section 8 of the IBC, 2016 was issued to the Corporate Debtor. Therefore, keeping in view, the position of law as enumerated by the Hon'ble Supreme Court in the above judgment, we have no option except to reject this petition.

**18.**In view of the above facts and circumstances, we find, that there was a preexisting dispute between the parties, and hence the present petition shall be rejected on this ground alone.

**19.**Consequently, **C.P.(I.B.) No. 382/ND/2023** stands **dismissed**. Needless to say, the Operational Creditor is free to pursue its remedies under any other law, and the dismissal of the present petition shall not stand in the way of such pursuit of remedies.

**20.**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)**