

**IN THE NATIONAL COMPANY LAW TRIBUNAL  
DIVISION BENCH (COURT- I) CHENNAI**

ATTENDANCE CUM ORDER SHEET OF THE HEARING  
HELD ON **18.04.2024** THROUGH VIDEO CONFERENCE

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**PRESENT:** HON'BLE SHRI. SANJIV JAIN, MEMBER (JUDICIAL)  
HON'BLE SHRI VENKATARAMAN SUBRAMANIAM, MEMBER (TECHNICAL)

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Application No : -  
Petition No : CP(IB)/201(CHE)/2022  
Name of Petitioner : Metabion International AG  
& Vs  
Name of Respondent : Trivitron Healthcare Pvt Ltd  
Section : Sec 9 Rule 6 of IBC, 2016

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**ORDER**

Present: Ld. Counsel Shri. Ahwin Shanbhag for the Petitioner.

Ld. Counsel Ms. Pavithra Dayalan for the Respondent.

Vide separate order announced in open court, the petition is dismissed.

File be consigned to records.

-Sd-  
[VENKATARAMAN SUBRAMANIAM]  
MEMBER (TECHNICAL)

MG

-Sd-  
[SANJIV JAIN]  
MEMBER (JUDICIAL)

**IN THE NATIONAL COMPANY LAW TRIBUNAL  
DIVISION BENCH – I, CHENNAI**

**CP(IB)/201(CHE)/2022**

*(filed 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. Trivitron Healthcare Private Limited*

**METABION INTERNATIONAL AG**

A Company incorporated in accordance  
With the laws of Federal Republic of  
Germany. Having address at  
Simmelweisstraße, 82152 Planegg,  
Germany

*.... Operational Creditor*

*-Versus-*

**TRIVITRON HEALTHCARE PRIVATE LIMITED**

A company incorporated under the  
Provisions of the Companies Act, 1956  
Having registered address at:  
Trivitron Sapthagiri Bhawan, 15, IV Street,  
Abhiramapuram, Chennai – 600 018

*.... Corporate Debtor*

*Order Pronounced on 18<sup>th</sup> April 2024*

**CORAM:**

**SANJIV JAIN, MEMBER (JUDICIAL)**

**VENKATARAMAN SUBRAMANIAM, MEMBER (TECHNICAL)**

*For Petitioner : Srinath Sridevan, Senior Advocate  
Ashwin Shanbhag, Advocate*

*For Respondent : S. Sathiyarayanan, Advocate*

**ORDER**  
*(Heard through physical mode)*

Under adjudication is an application filed by Metabion International AG (*hereinafter referred to as 'Operational Creditor'*) against Trivitron Healthcare Private Limited (*hereinafter referred to as 'Corporate Debtor'*) under Section 9 of the Insolvency and Bankruptcy Code, 2016 (*'hereinafter referred to as IBC, 2016'*) seeking thereof to initiate Corporate Insolvency Resolution Process (CIRP) against the Corporate Debtor.

2. Part – I of the Application, states that the Operational Creditor is a Company incorporated in accordance with the laws of Republic of Germany. Part – II of the Application states that the Corporate Debtor is a Private Limited Company incorporated under the provisions of Companies Act, 1956 with CIN: U85110TN1998PTC0405154 and having its registered office at Trivitron Sapthagiri Bhawan, 15 IV Street, Abhiramapuram, Chennai – 600 018. In Part – III of the Application, the Operational Creditor has not proposed the name of the IRP and left it to the discretion of this Tribunal to appoint the same.

3. In Part – IV of the Application, the Operational Creditor has claimed a total amount of Rs.5,73,20,364.41/- including interest at the rate of 18% p.a. The date of default is stated to be 01.07.2021. The present Application has been filed on 24.08.2022.

4. It is submitted that in the usual course of business, Corporate Debtor had approached the Operational Creditor for supply of primers and probes i.e., two types of single stranded oligonucleotides used in various types of PCR (test kits) for Covid testing. Pursuant to the same, two purchase orders were issued by the Corporate Debtor bearing PO Nos. 4100016047 and 4100016399 respectively.

5. It is submitted that the Corporate Debtor issued the First Purchase Order on 29.04.2021 for supply of custom-made primers and probes for a value of EUR 2,41,584. Subsequently, the goods were delivered at the Corporate Debtor's Chennai facility in 2 tranches under Delivery Order Nos. N210506- 064 and N210430-039 respectively. Accordingly, the Operational Creditor raised invoice nos. 1171808 and 1173176 under the said delivery orders.

6. It is submitted that at the time of accepting delivery of the aforesaid goods, no dispute and/or protest was raised by the Corporate Debtor. Despite having received the goods, the Corporate Debtor neglected and failed to make payment towards Invoice No. 1173176 dated 01.06.2021.

7. It is submitted that the Corporate Debtor issued the Second Purchase Order on 21.05.2021 for supply of custom-made primers and probes for a value of EUR 3,16,524. It is submitted that the delivery date for the said Order was confirmed as 02.07.2021. The Operational Creditor duly manufactured and kept the goods ready for delivery on 29.06.2021 (i.e. before the stipulated date of delivery) and informed the Corporate Debtor that the goods are ready for delivery. It is submitted that it was the duty of the Corporate Debtor to inform the carrier details and take delivery of goods. Accordingly, the Operational Creditor followed up repeatedly with the Corporate Debtor for delivery (vide emails dated 28.06.2021, 01.07.2021, 02.07.2021, 06.07.2021, 13.07.2021) but the Corporate Debtor failed to accept the delivery and eventually, after the lapse of almost 5 months, the Corporate Debtor requested to cancel the Order.

8. It is submitted that as per the terms and conditions agreed between the parties and considering the nature of the custom-made goods, cancellations were only permitted within 30 minutes from confirmation of the order which was specifically communicated by the Operational Creditor. Further, the Corporate Debtor kept engaging with the Operational Creditor for the entire period of 5 months and then suddenly, adopted a stand that due to loss of market in Covid-19, it wishes to cancel the Second Purchase Order.

9. It is submitted that these primers and probes were manufactured and kept ready as per the specifications and requirements of the Buyer and hence, the Corporate Debtor was liable to make the payment against Invoice No 1174945.

10. It is submitted that due to non-payment of the outstanding invoices, the Operational Creditor had been regularly following up for payments with the Corporate Debtor. It is submitted that vide email dated 27.10.2021, Operational Creditor requested for an amount of EUR 6,09,223.50 which

was due and payable against 3 outstanding invoices nos. 1173176, 1173489 and 117495. In response to the said email, the Corporate Debtor, promised that payment against invoice nos. 1173176, 1173489 would be released by 15.11.2021. However, the Corporate Debtor very conveniently refused to take delivery of the goods and also failed to make the payment for invoice no. 1174945 *qua* the Second Purchase Order on account of purported loss of market due to decline in COVID-19 cases in India.

11. It is submitted that as per the terms of the Purchase order and Invoice, the goods were to be collected by the Corporate Debtor which was time and again informed and requested by the Operational Creditor to collect the same. It is submitted that the Corporate Debtor had released the payment against the invoice, no. 1173489, but the payment with respect to invoice no. 1173176 for a value of EUR 2,41,584.50 and invoice no. 117495 for a value of EUR 3,16,524.50 raised against the First and Second Purchase Orders is still due and payable by the Corporate Debtor and no amounts have been received by the Operational Creditor against the same.

12. It is submitted that after chasing the concerned officials of the Corporate Debtor for releasing the outstanding amount against pending invoice nos. 1173176 and 1174945, the Operational Creditor was constrained to send an email dated 26.01.2022 to the Managing Partner of the Corporate Debtor, for releasing an outstanding amount of EUR 5,58,109. In response to the said email, the Corporate Debtor vide email dated 27.01.2022 stated that due to non-functioning of certain products, the payment was withheld by the Corporate Debtor.

13. It is submitted that after passing of almost 5 months and constant follow-ups for releasing the outstanding payment, the Corporate Debtor with ulterior motives made a remark stating that some of the goods supplied by the Operational Creditor were rejected. It is stated that the Parties were conducting business with each other for a long time and were aware of the standard procedures and terms and conditions of business. Therefore, due to their long-standing professional relationship, the Operational Creditor had given priority to the Purchase Orders issued by the Corporate Debtor as the custom made goods were required for



COVID-19 pandemic, hence, the supply of the same was kept on high priority by the Operational Creditor.

14. It is submitted that vide email dated 04.02.2022, the Corporate Debtor admitted that there is an outstanding amount of EUR 2,41,598.50 which is due and payable by it. It is submitted that at the time of writing of the e-mail, no dispute and/or protest and/or objection was raised as to the quality of the said goods. The e-mail is proof of the fact that the Corporate Debtor has only thereafter concocted a false, frivolous and baseless story to wriggle out of its obligations to repay the Operational Creditor. However, when the Operational Creditor started to vigorously follow up for collection of goods and release of outstanding payment, the Corporate Debtor vide the said email maliciously stated that the materials obtained by the Operational Creditor were sold by booking a loss in its books due to dynamic pricing and risk of carrying the high raw material inventory.

15. It is submitted that only when the matter was escalated to the Managing Director of the Corporate Debtor and sensing that the

Operational Creditor may initiate legal proceedings, the Corporate Debtor for the first time raised *malafide*, moonshine and spurious excuse of rejection of goods due to supply of faulty material and cancellation of order. It is further submitted that due to the current ongoing prices, it was difficult for the Corporate Debtor to proceed with the pending Order. Accordingly, the Corporate Debtor requested the Operational Creditor to consider cancelling the same. Further, it was also requested that the Operational Creditor share at least 50% of the loss borne by them which clearly shows that the alleged rejection of goods due to faulty materials supplied by the Operational Creditor was nothing, but a baseless and unfounded allegation raised as a smokescreen to cover its own default in clearing the legally recoverable dues of the Operational Creditor.

16. It is submitted that the Operational Creditor issued the Demand Notice dated 19.03.2022 in Form 3 under Section 8 of IBC, 2016 to the Corporate Debtor on its registered address calling upon them to pay an amount of Rs. 5,59,84,534.60/- with running interest @ 18% per annum until payment/realization thereof.

17. It is submitted that in response to the same, the Corporate Debtor vide Reply dated 28.03.2022 made false, inconsequential and frivolous allegations by denying the liability of the outstanding amount and pointing finger at the Operational Creditor for their laxity and incompetence. However, the fact is that the Corporate Debtor has tried to sway by disregarding and making false claims only to escape from the liability of making outstanding payments for the services rendered by the Operational Creditor. Under such circumstances, the Operational Creditor has prayed for initiation of CIRP as against the Corporate Debtor.

18. The Respondent / Corporate Debtor has filed the reply. It is submitted that the Corporate Debtor is a well-known India- based Global Multi Product Medical Technology company catering to the various medical needs of people since 1997. The Corporate Debtor serves 1,00,000+ customers such as hospitals, medical service providers, laboratories, clinics and other healthcare centers in over 180 countries across the world. It is submitted that during the pandemic, the Corporate Debtor had gained significant goodwill and reputation. The Corporate Debtor's reputation and market dominance are reflected in its annual turnover which stood at

Rs. 400 crores in 2018-19, Rs. 450 crores in 2019-20 and Rs. 500 crores in 2020-21.

19. It is submitted that based on the representation made by the Operational Creditor, the Corporate Debtor approached the Applicant for procuring primers and probes (i.e., different types of single-stranded oligonucleotides primers and dual labelled fluorescence probes) used in the production of various types of PCR test kits. Using the primers and probes procured from the Operational Creditor, the Corporate Debtor manufactured covid RT-PCR test kits under the name "COVID Sure".

20. It is submitted that in Covid Sure RT-PCR kits, synthetic DNA primers and fluorescence labelled hydrolysis probes were used. The kit provides Primer-Probe mix with FAM labelled Primers & Probes set specific to Orflab and HEX labelled Primers & Probes set specific to E gene regions of SARS-Cov genome. The kit is based upon singlestep RT-PCR where both Reverse Transcriptase and PCR by Taq Polymerase takes place in a single tube. A signal in the FAM channel and/or HEX Channel suggests the presence of the SARS-CoV (Covid-19) virus in the sample. It is

submitted that if the Primer and Probe are defective, then Covid Sure RT-PCR kits will not reflect the presence of the SARS-CoV (Covid-19) virus and consequentially the results shown by the kit will be unreliable.

21. It is submitted that based on the representation made by the Operational Creditor, the Corporate Debtor issued Purchase Order PO No. 4100016047 dated 29.04.2021 for the supply of primers and probes for a value of EUR 2,41,584. Further, the purchase order dated 29.04.2021 issued by the Corporate Debtor clearly states that "Material will be accepted as per this approved QC Specifications only". These Purchase Orders are subject to the regular terms and conditions of the Corporate Debtor.

22. It is submitted that the Corporate Debtor took delivery of the goods under 2 tranches on 11.05.2021 and 01.06.2021. Further, the Operational Creditor had raised the following invoices for the goods supplied under Purchase Order dated 29.04.2021

S. NO.	INVOICE NO.	DATE	AMOUNT IN EUR
1	1171808	11.05.2021	41,024.50
2	1173176	01.06.2021	2,41,584.00

23. It is submitted that out of the two invoices, the Corporate Debtor made payment for Invoice No. 1171808 on 23.06.2021 by making a payment of EUR 41,024.50. It is submitted that the Corporate Debtor started getting several complaints about the goods supplied by the Operational Creditor. The Operational Creditor undertook to rectify the quality issues by supplying additional quantity, but to the shock and surprise of the Corporate Debtor, they failed to do.

24. It is submitted that several customers of the Corporate Debtor started making complaints that the RT-PCR kits, i.e. Covid Sure, did not reflect true results and demanded the Corporate Debtor to replace the kits. Due to this the Corporate Debtor faced serious hardship and lost both goodwill and reputation. It is further submitted that one M/s. RMRC Dibrugarh, Assam, a customer of the Corporate Debtor had informed that one Dr. Biswajyoti Borkakoty in his letter dated 25.10.2021 sent to RMRC Dibrugarh, had raised various issues in the goods. All these facts clearly establish that the goods supplied by the Applicant were defective and of low and substandard quality.

25. It is submitted that after considering various complaints and issues in the goods supplied by the Operational Creditor, the Corporate Debtor vide email dated 27.10.2021 initiated for cancellation of Second Purchase Order No. 4100016399. It is submitted that the goods that were alleged to be produced by the Operational Creditor pursuant to Purchase Order no. 4100016399 **were not even taken for delivery by the Corporate Debtor.**

26. It is submitted that the Corporate Debtor had a good business relationship with the Operational Creditor and had promptly made payments to all the purchase orders that were made prior to 29.04.2021. However, the Corporate Debtor was forced to stop payment for Invoice No.1173176 and had to cancel the Purchase No.4100016399 owing to delayed supplies and defective and sub – standard quality of goods supplied by the Applicant.

27. It is submitted that the Corporate Debtor had bought EUR 15,99,577 worth of raw materials in 14 shipments and 138 number of batches from the Operational Creditor. Out of this EUR 13,57,993 was paid to Operational Creditor and Euro 2,41,584.50 was withheld for complaints in

batch numbers PO 4100016047 invoice no 1173176 dated 01.06.2021 Batch Nos. T068D011/9, T068D022/9, T068D033/9, T068D044/9, T068D055/9, T068D066/9, T068D077/9, T068D088/9 and T068D099/9 and the last pending shipment was cancelled due to delayed supplies and quality complaints in batches mentioned above.

28. It is submitted that the present Application filed by the Applicant under Section 9 of IBC, 2016 is not maintainable as there is a pre-existing dispute between the Applicant operational creditor and Corporate Debtor pertaining to the quality of the goods supplied by the Applicant. Further, the claim of Rs. 2,79,11,130.41/- for Invoice no1174945 is not maintainable as the Purchase order dated 4100016399 was cancelled by the Corporate Debtor and no goods were delivered to the Corporate Debtor to date for the said invoice number. Under such circumstances, the Corporate Debtor has prayed for dismissal of the present Application.

29. Heard the submissions made by the Learned Counsel for both the parties and perused the record.



30. The Operational Creditor in Part – IV of the Application has made a claim as against two invoices which are as follows;

Invoice No. 1173176	Rs.2,13,39,158.66 (EUR 2,41,584.50 considering conversion rate at Rs.88.33/- Euro as on 01.07.2021)
Invoice No. 1174945	Rs.2,79,11,130.41 (EUR 3,16,524.50 considering conversion rate at Rs.88.18/- Euro as on 28.07.2021)

31. The defenses raised by the Corporate Debtor in relation to the first invoice is that the material supplied by the Operational Creditor was defective and of low and substandard quality. In relation to the second invoice, it is stated that the order was cancelled by the Corporate Debtor and they had not even taken the delivery.

32. In relation to Invoice No.1173176 raised by the Operational Creditor to the tune of Rs.2,13,39,158.66/- (EUR 2,41,584.50) it is seen that lot of emails have been exchanged between the parties. The Applicant / Operational Creditor on 26.01.2022 wrote an email to the Corporate Debtor demanding payment from the Corporate Debtor which is as follows;

*Dear Dr. Velu, dear Mr. Mittal,*

*I am contacting you today because our last emails and calls were unfortunately not answered, if not to say ignored by your staff.*

*For quite some time we have been trying to collect our receivables that arose during the Corona period 2021 with a total amount of EUR 558.109. metabion is a globally leading supplier of Custom Nucleic Acids renowned for its focus on reliable supplies of consistently high-quality products and services, especially for diagnostic purposes. For the last two years we have been supplying you and Labsystems Diagnostics with primers and probes for diagnostic assays established and marketed by Trivitron/Labsystems.*

*Now, the situation with Trivitron is quite unpleasant. You put a lot of pressure on us to deliver a big amount of ingredients (primers and probes) going into your commercial "Covid-19 assay" claiming your order is very urgent. Accordingly, and knowing about the situation in India at that time, we have put your orders on our top priority list, which was bulging with urgent orders from other customers/continents. We reserved production slots and blocked capacities to be able to produce your order within the time agreed upon. This means that other customer orders that were urgent for the same purpose had to wait longer for production and shipment, while yours is still partially "sitting" in the fridge - wasted and unpaid! After 5 months and several emails from our side, we were audaciously told that these custom made goods were no longer needed. For more details please see attached email conversation.*

*I am sorry to say that it cannot be our problem, if Trivitron is not able to plan its needs professionally enough. Fact is that we have spent money on materials and labor. Our staff was and is well aware of their responsibilities. We have been working 24/7 in order to help fighting the pandemic with what we are doing. Trivitron's behavior is like a slap in the face of metabion, our people, our customers and the entire/global community. Unprofessional, disappointing and unacceptable. We won't let you get away with this misconduct, but take appropriate measures to correct this situation and claim our rights for justness. The bond of trust we entertain with our customers and partners in business is badly damaged.*

*To avoid further damage to either party, I urge you to contact us by no later than **January 31, 2022** providing us with a firm payment date.*

*Best regards,*

*Dr. Regina Bichlmaier  
CEO*

33. In reply to the same, the Corporate Debtor on 27.01.2022 wrote an email to the Operational Creditor, which reads as follows;

*Dear Dr. Regina,*

*Thanks for your mail.*

*I have never interacted with you and do not understand the full background of this issue fully too. I take strong objection to your language and tone of first communication to me directly.*

***I hear from our team the payment is held due nonfunctioning of certain products supplied by you and this was communicated multiple times to your team too.*** Hence I don't understand or appreciate the mail to me threatening actions. ***If there has been supply of faulty products, obviously the payments will be withheld for the same. You can take back such products as found appropriate. I also hear there were batch quality rejections leading to big problems, payment rejections and losses with end customers too and Trivitron is not asking for compensation for such losses which happened due to faulty raw materials supplied by you as yet. I also hear, Trivitron will be able to provide the proof of quality rejections which happened in end customers locations due to a faulty batch supplied by you and this has lead to enormous losses to the company. In business one should learn to share the gain and pain and not act high handed in actions when there are losses.***

*When such issues happen obviously, the company needs to move to alternate suppliers and return the raw materials in which there is no confidence. Hence pressurising the company to accept raw materials in which there is no confidence is not a good business practice*

*I am connecting the relevant officers Rajesh Patel, Dheeraj Arora and Ravish Mittal and they will give you explanations as found appropriate and I don't want to be dragged into issues in which I was never part of in the past.*

*Please stop writing such unilateral threatening mails and such actions will be appropriately dealt with in the future. I will not be responding to such mails in the future too*

*Thank you*

*Regards,  
Dr. GSK Velu  
Chairman & Managing Director*

34. Perusal of the aforesaid emails exchanged between the parties would show that there existed dispute between the parties even before the issuance of Demand Notice dated 19.03.2022. It is also seen that the Corporate Debtor had also sent a detailed reply to the Demand Notice, by referring to the numerous emails exchanged between the parties and also stated that goods supplied by the Operational Creditor were defective, low and substandard quality.

35. It is seen that the Corporate Debtor had received various complaints in relation to the substandard quality of materials supplied by the Operational Creditor and as such vide email dated 27.10.2021 the Corporate Debtor initiated for cancellation of the Second Purchase Order No. 4100016399. However, the Operational Creditor had replied stating that cancellations were only permitted within 30 minutes from confirmation of the order. It is pertinent to note that in the Purchase order of the Corporate Debtor, it is mentioned that the "Material will be accepted as per our approved QC Specifications only". Further, it is seen that the Corporate Debtor has not taken delivery of these goods from the Operational Creditor and as such there is no liability on the part of the Corporate Debtor as against the Purchase Order No. 4100016399 and corresponding Invoice No.1174945.

36. At this juncture we find it apt to refer to the Judgment of the Hon'ble NCLAT in the matter of **Om Prakash –Vs- Wipro Enterprises Pvt. Ltd & Anr.** in *Company Appeal (AT) (Ins) No. 31 of 2023*, wherein it is held in para 28, 29 and 30 as follows;

28. *The Adjudicating Authority in its Order while referring to the judgement of the Hon'ble Supreme Court in Mobilox Innovations Pvt. Ltd.*

*V. Kirusa Software Pvt. Ltd. 1 (2018) 1 SCC 353 has further observed that the definition of 'dispute' must fit under the parameters as defined under the IBC but at the same time must also stand on a test as laid down in the recent judgment of the Hon'ble Apex Court in M/s S.S. Engineers v. Hindustan Petroleum Corporation Ltd. (supra). The common thread in both the judgments is that the CIRP can be triggered only if there is a default in the payment of an undisputed debt and all that the Adjudicating Authority has to see at this stage is whether there is a plausible contention which requires further investigation. We are of the considered view that Adjudicating Authority has referred to both these judgments but failed to correctly appreciate and apply the ratio in the facts of the present case.*

29. ....

30. *Though there is no need to enter into final adjudication with regard to existence of dispute between the parties regarding operational debt, but the contents of these emails/ letters/minutes of meetings ought to have been factorized to arrive at a finding whether the defence taken by the Corporate Debtor is moonshine defence unsupported by evidence. Surprisingly none of these emails and letters establishing the existence of pre-existing disputes between the parties have been taken into cognisance by the Adjudicating Authority. These being pertinent factors for consideration, to our mind the Adjudicating Authority has committed an error in side-stepping these aspects and admitting Section 9 application.*

31. *Where operational creditor seeks to initiate insolvency process against a Corporate Debtor, it can only be done in clear cases where no real dispute exists between the two parties which is, however, not so borne out given the facts of the present case*

37. The Hon'ble Supreme Court in **Mobilox Innovations Pvt. Ltd. Vs. Kirusa Software (P) Limited**; 2017 1 SCC Online SC 353 has held that the 'existence of 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 and observed 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..”*

At paragraph 51 it is held:

*“51. ....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.”*

38. The Hon’ble Supreme Court in **M/s. S. S. Engineers Vs. Hindustan Petroleum Corporation Limited & Ors**; 2022 SCC Online SC 1385 has held that in para 31 and 32 as follows;

*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.*

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.*

39. Thus, in view of the dispositive reasoning stated above as well as the Judgments referred *supra*, we are of the view that there exist dispute between the parties in relation to the quality of the goods supplied by the Operational Creditor and the defence raised by the Corporate Debtor is plausible which requires further investigation. Hence, the present Application filed by the Operational Creditor under Section 9 of IBC, 2016 seeking initiation of CIRP as against the Corporate Debtor is liable to be dismissed and accordingly stands **dismissed**. No order as to costs.

**-Sd-**

**VENKATARAMAN SUBRAMANIAM**  
MEMBER (TECHNICAL)

**-Sd-**

**SANJIV JAIN**  
MEMBER (JUDICIAL)

*Raymond*