2025 INSC 1410

Non-reportable

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 12261 OF 2024

M/s. Saraswati Wire and Cable Industries … Appellant

versus

Mohammad Moinuddin Khan and others … Respondents

J U D G M E N T

SANJAY KUMAR, J

1. Initiation of corporate insolvency resolution process[1] by an operational creditor under Section 9 of the Insolvency and Bankruptcy Code, 2016[2], is in issue. By order dated 06.12.2023, the National Company Law Tribunal, Mumbai Bench-IV[3], admitted C.P.(IB)No. 398/NCLT/MB/C-IV/2023 filed by a registered partnership firm, viz., M/s. Saraswati Wire and Cable Industries[4], under Section 9 of the IBC and initiated the CIRP against Dhanlaxmi Electricals Private Limited, the

1 For short, ‘CIRP’
2 For short, ‘the IBC’
3 For short, ‘the NCLT’
4 For short, ‘the firm’

corporate debtor[5], by appointing an Interim Resolution Professional. Aggrieved thereby, Mohammad Moinuddin Khan, a suspended director of the CD, filed Company Appeal (AT) (Insolvency) No. 22 of 2024 before the National Company Law Appellate Tribunal, Principal Bench[6], New Delhi, under Section 61 of the IBC. By judgment dated 13.03.2024, the NCLAT allowed the said appeal and set aside the order of admission passed by the NCLT on the ground that there was a pre-existing dispute between the parties as to the firm's debt prior to institution of the application under Section 9 of the IBC. Hence, this appeal by the firm.

2. The CD is a licensed engineering company that carries out works on contract basis. It placed purchase orders on the firm for supply of pipes and cables for its projects. The CD maintained a running account and used to make payments to the firm on the strength of the invoices raised by it from time to time. While so, the firm communicated its ledger account to the CD under email dated 31.07.2021 and sought confirmation thereof. In response, the CD addressed email dated 04.08.2021, through its Accounts Manager, informing the firm of three points of difference in the account maintained by it when compared with the ledger account sent by the firm. The points of difference were in relation to two debit notes of ₹6,490/- and ₹15,340/- respectively and a voucher of ₹1,37,210/-. All three

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5 For short, 'the CD'
6 For short, 'the NCLAT'

pertained to November, 2018. The ledger account of the firm maintained by the CD from 01.04.2017 to 01.04.2021 was communicated by the CD under its email dated 04.08.2021. A closing debit balance was shown therein of ₹2,49,93,690.80, i.e., the sum due and payable to the firm. The ledger account of the firm maintained by the CD from 01.04.2020 to 30.03.2022 is also placed on record and it reflects an opening balance of ₹2,49,93,690.80, i.e., the closing balance of the earlier account. Three payments of ₹20 lakh each were made to the firm on 18.06.2020, 25.06.2020 and 20.08.2020 respectively and, thereafter, payment of ₹10 lakh was made on 29.08.2020, resulting in a closing debit balance of ₹1,79,93,690.80.

3. On 25.08.2021, the firm issued a demand notice under Section 8 of the IBC claiming the aforestated principal amount of ₹1,79,93,691/- along with interest thereon, quantified at ₹85,27,110/-, aggregating to ₹2,65,20,800/-. Seven invoices, from 29.05.2019 to 06.10.2019, found mention therein and the amount payable thereunder added up to ₹2,07,69,341/-. After adjusting the amounts paid, the claimed amount tallied with the debit balance shown by the CD in its ledger account pertaining to the firm. However, in his reply dated 20.11.2021 to this demand notice, the Technical Director of the CD raised an issue with regard to two invoices that found mention in the demand notice, i.e., Invoice No. 203 dated 29.09.2019 for a sum of ₹33,42,527/- and Invoice

No. 205 dated 06.10.2019 for a sum of ₹23,81,417/-. According to him, no supplies were made as against these two invoices, but a sum of ₹50 lakh was stated to have been paid as advance against them. It was further stated that the material supplied by the firm was sub-standard and there was also an issue of short supply. He stated that the CD had incurred financial losses owing to the sub-standard material supplied by the firm and a complaint was also made in that regard by a client, M/s. MSEDCL, under threat of blacklisting the CD. The reply ended with counter-claims for a sum of ₹67,96,800/- for 80 kilometres of faulty cable and ₹50 lakh towards non-supply of material under Invoice Nos. 203 and 205.

4. At this stage, we may note certain crucial facts: A separate CIRP had already been initiated against the CD, *vide* order dated 06.09.2021 passed in C.P.(IB)/244/MB-V/2020, an application filed under Section 9 of the IBC by M/s. Central Investigation and Security Services Limited, another operational creditor. Therefore, at the time the reply was furnished by the Technical Director of the CD to the firm's demand notice, that CIRP against the CD had commenced and an Interim Resolution Professional had taken over its management. In such a situation, the Technical Director of the CD, who stood suspended, had no authority to reply on its behalf. Further, it is an admitted fact that, even after issuance of the demand notice by the firm under Section 8 of the IBC, the CD continued to make payments to the firm and, in all, a sum of ₹61 lakh was paid.

5. Upon initiation of the CIRP against the CD, the firm submitted its claim before the Interim Resolution Professional on 09.11.2021. In reply, the Interim Resolution Professional addressed letter dated 19.11.2021 stating that the firm had supplied sub-standard cables and there was also short supply, as was conveyed under the CD's email dated 24.12.2018. The firm was, therefore, requested to accept the debit charges in order to process the payment further. The debit charges were, however, not detailed. Significantly, it was one day later that the suspended Technical Director of the CD separately sent his reply, i.e., on 20.11.2021.

6. While so, IA No. 2597 of 2021 was filed by the said Interim Resolution Professional under Section 12A of the IBC seeking withdrawal of C.P.(IB)/244(MB)2020 in view of a settlement with Central Investigation and Security Services Limited. The application was allowed by the National Company Law Tribunal, Mumbai Bench–V, *vide* order dated 22.06.2023. Perhaps having come to know of the filing of the withdrawal application, the firm instituted its own application under Section 9 of the IBC, i.e., C.P.(IB) No. 398/NCLT/MB/C-IV/2023, before the NCLT on 10.02.2023. Admittedly, the CD failed to file its reply in the company petition and its right to do so stood forfeited, *vide* order dated 11.09.2023 passed by the NCLT. This failure on the part of the CD speaks for itself. On 06.12.2023, the NCLT admitted the firm's application under Section 9 of the IBC. Reliance was placed on the ledger account maintained by the

CD itself, which showed that ₹1,79,93,690.80 was due and payable to the firm. The NCLT also noted the fact that the CD had paid ₹61 lakh towards the firm's outstanding dues after issuance of the demand notice under Section 8 of the IBC, which clearly negated a pre-existing dispute.

7. However, on appeal by the suspended director of the CD, the NCLAT accepted the plea that there was a pre-existing dispute, warranting dismissal of the firm's application under Section 9 of the IBC. Reference, in that regard, was made to the correspondence between the firm and the CD in the years 2018 and 2019. Apropos Invoice Nos. 203 and 205, the NCLAT was of the opinion that was only one facet of the dispute, as there was also an issue with regard to short supply and faulty cables. Further, the NCLAT laid much stress upon the fact that the firm issued a demand notice under Section 8 of the IBC on 25.08.2021 but did not choose to file its application under Section 9 of the IBC till 10.02.2023. According to the NCLAT, this delay on its part was a clear indication that disputes persisted between the parties regarding the claim put forth by the firm.

8. Surprisingly, the NCLAT seems to have been kept in the dark about a separate CIRP having been initiated against the CD, *vide* order dated 06.09.2021, and the fact that there was no possibility of the firm initiating its own CIRP at that stage. As per procedure, the firm attempted to lodge its claim with the Interim Resolution Professional appointed in that CIRP and it was only upon coming to know of the filing of a withdrawal

application in that CIRP that the firm filed its own application under Section 9 of the IBC. The delay on its part, therefore, could not be held against it.

9. Further, we find that though there were some exchanges between the parties in the years 2018 and 2019 on some issues regarding the supply of pipes and cables made by the firm, the same did not have the effect of stopping further supplies or further payments. This is clear from the ledger account of the firm maintained by the CD itself, which manifests continuous payments being made to the firm during the course of and even after the exchange of such correspondence. It is also an admitted fact that, after issuance of the demand notice under Section 8 of the IBC and the replies thereto both by the former Interim Resolution Professional as well as the suspended Technical Director of the CD in November, 2021, a sum of ₹61 lakh was paid to the firm, which would not have been the case if there were pre-existing disputes, giving rise to counter claims by the CD, as the CD would have then withheld such payment.

10. More importantly, having received the ledger account forwarded by the firm for confirmation, with its email dated 04.08.2021, the CD raised only three issues, i.e., *vis-à-vis* two debit notes and one voucher, and forwarded by email its own ledger account, signed on 04.08.2021, certifying that the debit balance stood at ₹2,49,93,690.80. The later account took note of the payments of ₹70 lakh made during June and August, 2020, and closed with a debit balance of ₹1,79,93,690.80.

11. These documents ought not to have been brushed aside lightly by the NCLAT while concentrating on the reply dated 20.11.2021 addressed to the firm by the suspended Technical Director of the CD. As already noted hereinbefore, he stood suspended as on that date and had no authority to address that reply on its behalf. Further, the issues sought to be raised by him were on three counts: i) that no supplies had been made against Invoice No. 203 dated 29.09.2019 and Invoice No. 205 dated 06.10.2019; ii) that there was short/faulty supply of cable by the firm as was conveyed under email dated 24.12.2018 (no details were mentioned as to the amounts to be deducted from the bills of the firm for the insufficient/faulty cables); and iii) that due to the sub-standard material supplied by the firm, the CD incurred huge financial losses and was also put under the threat of being blacklisted by its client, M/s. MSEDCL.

12. As regards, the first issue of non-supply of material against Invoice Nos. 203 and 205, the firm placed on record Delivery Challan dated 29.09.2019 in relation to Invoice No. 203 along with the e-way bill pertaining thereto. The value of the goods delivered thereunder was shown in the e-way bill as ₹33,42,527/-. As regards Invoice No. 205, the firm produced tax invoice dated 06.10.2019, mentioning Invoice No. 205 dated 06.10.2019, indicating that the delivery of the goods was to be made to the CD at Uttar Pradesh. The transport bill dated 06.10.2019 in relation to the supply of pipes under Invoice No. 205 from Palghar to Uttar

Pradesh, duly indicating the registration number of the truck in which the pipes were loaded, is also produced. An issue is sought to be raised by the CD for the first time, by way of the written submissions now filed, as to the maximum weight that could be loaded in the truck, which seems to have been used to transport both consignments, but the transport bill dated 06.10.2019 reflects the entry 'full trailer' in the remarks column, which explains the so-called discrepancy sought to be projected by the CD at this belated stage. Further, it is hardly believable that the firm would have cooked up all these documents in the year 2019 in anticipation of this litigation years later. Thus, the plea of the CD that no supplies were made against these two invoices, *prima facie*, cannot be accepted.

13. As regards the issue of short/faulty supply of cables, it may be noted that under the CD's email dated 24.12.2018, there was no clear mention of the actual short supply, but a later email dated 03.07.2019 indicated that the short supply was approximately 20,000 meters. Thereafter, in the replies issued in November 2021, the short/faulty supply was shown as 80 kilometres. No explanation is forthcoming from the CD as to how this inflated figure was arrived at.

14. As regards the issue of suffering huge losses due to substandard quality of the material supplied by the firm, resulting in a complaint from a client coupled with a threat of blacklisting, the CD did not place any material or document in support thereof. Further, there is no explanation

as to how the suspended Technical Director of the CD increased the length of the faulty cables allegedly supplied by the firm to 80 kilometres or how he quantified the counter claim at ₹67,96,800/- in that regard.

15. This being the factual scenario, we may now note the settled legal position on the issue. In ***Mobilox Innovations Private Limited vs. Kirusa Software Private Limited***[7], this Court held that the adjudicating authority dealing with an application filed under Section 9 of the IBC is required to determine whether there is an operational debt; whether evidence has been furnished to show that the said debt was due and payable but had not been paid; and whether there was any dispute in existence between the parties or any suit or arbitration was pending in relation to such dispute on the date of receipt of the demand notice of the unpaid operational debt. It was further observed that it would be important to separate the grain from the chaff and to reject a spurious defence which was mere bluster and that, while doing so, the Court did not need to be satisfied that the defence was even likely to succeed. It was clarified that, at that stage, the Court would not examine the merits of the dispute in toto and as long as the dispute truly existed in fact and was not spurious, hypothetical or illusory, the adjudicating authority would be entitled to reject the application.

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7 (2018) 1 SCC 353

16. Even in the pre-IBC era, in the context of a defence of a pre-existing dispute in a creditor's petition for winding up of a company in the regime obtaining under the Companies Act, 1956, this Court always stressed upon a dispute as to the entitlement of the creditor being a *bonafide* one and not mere moonshine. In ***Amalgamated Commercial Traders (P.) Ltd. vs. A.C.K. Krishnaswami and another***[8], a 3-Judge Bench of this Court held that a winding up petition is not a legitimate means of seeking to enforce payment of a debt which is *bonafide* disputed by the company and a petition presented ostensibly for a winding up order but really to exercise pressure would be dismissed, and under circumstances may be stigmatized as a scandalous abuse of the process of the Court. This principle was followed thereafter in ***Madhusudan Gordhandas & Co. vs. Madhu Woollen Industries Pvt. Ltd.***[9], ***Mediquip Systems (P) Ltd. vs. Proxima Medical System Gmbh***[10] and again in ***Vijay Industries vs. NATL Technologies Limited***[11]. Applying the same principle in ***IBA Health (India) Private Limited vs. Info-Drive Systems Sdn. Bhd.***[12], this Court observed that, in ***Mediquip Systems (P) Ltd.*** (*supra*), it was held that the defence must be substantial and not mere moonshine and held that if the debt is *bonafide* disputed, there cannot be 'neglect to pay' within

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8 (1965) 35 Comp Cas 456
9 (1971) 3 SCC 632
10 (2005) 7 SCC 42
11 (2009) 3 SCC 527
12 (2010) 10 SCC 553

the meaning of Section 433(1)(a) of the Companies Act, 1956, and the petition for winding up would not lie.

17. Coming back to the IBC regime, in ***Indus Biotech Private Limited vs. Kotak India Venture (Offshore) Fund and others***[13], while dealing with a financial creditor's application under Section 7 of the IBC, a 3-Judge Bench of this Court observed that the adjudicating authority has a duty to advert to the contentions put forth in the application, examine the material placed before it by the financial creditor and record satisfaction as to whether there is default or not. It was further observed that, while doing so, the contention put forth by the corporate debtor shall also be noted to determine as to whether there is substance in the defence and to arrive at the conclusion whether there is default.

18. Referring to the aforestated decision in ***Tata Consultancy Services Limited vs. SK Wheels Private Limited, Resolution Professional, Vishal Ghisulal Jain***[14], this Court reiterated that the adjudicating authority is duty-bound to advert to the material before him, as made available along with the application filed under Section 7 of the IBC by the financial creditor to indicate default along with the version of the corporate debtor. It was noted that this is for the reason that, keeping in perspective the scope of the proceedings under the IBC and there being a timeline for the

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13 (2021) 6 SCC 436
14 (2022) 2 SCC 583

consideration to be made by the adjudicating authority, the process cannot be defeated by a corporate debtor by raising moonshine defence only to delay the process. Therefore, *per* this Court, the adjudicating authority must advert to the contentions put forth on the application filed under Section 7 of the IBC, examine the material placed before it by the financial creditor and record satisfaction as to whether there is default or not and, while doing so, the contention put forth by the corporate debtor shall also be noted to determine as to whether there is substance in the defence and to arrive at the conclusion whether there is default.

19. Applying this legal standard to the case on hand we have no hesitation in holding that the defence of pre-existing disputes sought to be put forth by the CD was mere moonshine and had no credible basis or foundation. There was no dispute worth the name existing as on the date of issuance of the demand notice by the firm warranting the withholding of the operational debt due and payable by the CD. The attempt to project such pre-existing disputes was mere bluster and did not have the effect of non-suiting the firm.

20. The NCLAT, however, lost sight of these critical facts while dislodging the order of admission passed by the NCLT on the application filed by the firm under Section 9 of the IBC. The NCLAT, not being informed of the full facts, attributed delay to the firm and failed to attach value and consequence to the CD's own ledger account which clearly

negated the claim of pre-existing disputes, as the minor issues raised by the CD obviously did not have the effect of either stopping further supplies by the firm or further payments to the firm by the CD. The NCLAT also failed to attach requisite importance to the email dated 04.08.2021 sent by the CD along with the said ledger account, that clearly evidenced that more than the threshold amount was due and payable to the firm even after adjustment of the amounts mentioned in the debit notes and voucher.

21. The judgment dated 13.03.2024 passed by the National Company Law Appellate Tribunal, Principal Bench, New Delhi, is accordingly set aside and the order of admission dated 06.12.2023 passed by the National Company Law Tribunal, Mumbai Bench-IV, in C.P.(IB)No. 398/NCLT/MB/C-IV/2023, is restored. Further proceedings in the said company petition shall be initiated in accordance with law and due procedure from the date of communication of this judgment.

The appeal is allowed in the aforestated terms.

Parties shall bear their respective costs.

....., J.
[SANJAY KUMAR]

....., J.
[ALOK ARADHE]

December 10, 2025
New Delhi.