NATIONAL COMPANY LAW APPELLATE TRIBUNAL,
PRINCIPAL BENCH, NEW DELHI

Company Appeal (AT) (Insolvency) No. 1971 of 2025

[Arising out of Order dated 31.10.2025 passed by the Adjudicating Authority (National Company Law Tribunal), New Delhi, Court-III in C.P. (IB)-60(ND)/2025]

IN THE MATTER OF:

FTI Consulting India Pvt. Ltd.
The Executive Centre, Level 7,
Parinee Crescenzo, Plot No. C-38/39,
G Block, Bandra Kurla Complex,
Bandra (East),
Mumbai – 400051

...Appellant

Versus

MGF Developments Ltd.
MGF House, 17B, Asaf Ali Road,
New Delhi – 110001

...Respondent

Present:

For Appellant: **Mr. Nalin Kohli, Sr. Advocate with Mr. Anshul Malik, Mr. Shank Sengupta, Mr. Ribhu Garag and Mr. Arnav Doshi, Advocates.**

For Respondent:

J U D G M E N T

Ashok Bhushan, J.

This appeal has been filed challenging the order dated 31.10.2025 passed by the Adjudicating Authority (National Company Law Tribunal), New Delhi, Court-III rejecting Section 9 application filed by the Appellant.

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Aggrieved by the order rejecting Section 9 application, this appeal has been filed.

2. Brief facts of the case necessary to be noticed for deciding this appeal are:

2.1 The Appellant - FTI Consulting India Pvt. Ltd. agreed to provide independent expert services to the MGF Developments Ltd, Respondent No.1 herein, with respect to an arbitration case pending before ICC, London. The legal advisors of the Respondent – Three Crowns LLP and Respondent agreed to take independent expert service in respect to certain claims filed against Emaar MGF Land Limited.

2.2 A letter dated 26.02.2020 was sent by the Appellant to the Respondent as well as Three Crowns LLP, the legal advisor, containing terms and conditions for engagement of the Appellant including fee structure for conducting the engagement of the Appellant.

2.3 The Respondent has filed an arbitration case against Emaar MGF Land Limited in reference to which the Appellant was engaged in reference to its Senior Managing Director, Mr. Montek Mayal, who was consultant of Economic and Financial Consulting practice in India, who signed the agreement on behalf of the FTI. The work was divided in four phases. Under Phase-1 of the work maximum fee agreed was USD 30,000/-. After the aforesaid, service agreement dated

26.02.2020, where the FTI agreed to provide the service as contemplated, FTI extended services to the Respondent.

2.4 Mr. Montek Mayal, who was Senior Managing Director in FTI left the FTI on 14.01.2022.

2.5 On 20.05.2022, the Appellant issued first invoice to the Respondent. FTI issued second invoice on 20.06.2022, third invoice was issued on 20.09.2022 and fourth invoice was issued on 14.02.2023. The Corporate Debtor has made payments towards invoices from time to time totalling to USD 469,600/-. An amount of USD 219,600/- was paid by the Respondent on 28.04.2023.

2.6 Mr. Montek Mayal ceased to be in employment of the Appellant w.e.f. 14.01.2022, his service was taken by the Respondent through Osborne Partners, another entity. Payments for various work which was performed by Mr. Montek Mayal through entity Osborne Partners was made towards the work. Payments were made by the Respondent to Mr. Montek Mayal through Osborne Partners in the year 2023.

2.7 The Appellant issued Demand Notice under Section 8 dated 15.07.2024 claiming default of amount outstanding of USD 367,353.29/- equivalent to Rs.3,00,94571/-. The Appellant relied on service agreement dated 26.02.2020 and Addendum dated 05.10.2020, outstanding invoices, certain email exchange between the parties and invoice dated 25.04.2023.

2.8 The Demand Notice issued under Section 8 was replied by the Respondent by letter dated 25.07.2024. In the reply dated 25.07.2024, the Respondent No.1 denied the claim of the Appellant. It was also stated in the reply to the Demand Notice that the reply shall be treated as complete and effective service of notice of disputed for all legal and practical purposes under Section 8(2) of the Code. Reply to the Demand Notice after referring to various clauses of agreement dated 26.02.2020 pleaded that the agreement was executed with the Appellant with Mr. Montek Mayal being primary contact for the Respondent and the services to be rendered in the form of Expert Evidence were to be rendered by Mr. Montek Mayal as he was cited as Expert Witness on behalf of the Respondent in the arbitration proceedings before ICC, London. The Respondent has changed its legal Advisor Three Crowns LLP to Taylor Wessing LLP and an intimation of which was also recorded by all three signatories of agreement dated 26.02.2020. It was pleaded that no service by Appellant (for preparation of trial and trial attendance) was conducted and for services which have been extended by the Appellant payments have been made. The Respondent continued with the services of Mr. Montek Mayal through its business entity – Osborne Partners and agreement dated 01.06.2023 was also entered between the Respondents and Mr. Montek Mayal through business entity Osborne Partners. The services rendered by the Appellant to the Respondent were with regard to valuation services remained confined to and

performed by Mr. Montek Mayal. After disassociation of Mr. Montek Mayal with the Appellant, the Appellant was unable to provide any service. Respondent has paid an amount of Rs.3.88 Crores to Mr. Montek Mayal acting for and on behalf of FTI and has paid an amount of Rs.2.07 Crore to Mr. Montek Mayal acting through Osborne Partners. The claim was refuted as false and incorrect.

2.9 The Appellant sent a letter dated 04.11.2024 responding to the Reply to the Demand notice dated 25.07.2024. On 10.01.2025, the Appellant filed Section 9 application claiming an outstanding amount of USD 367,353.29/- including interest. The date of default in Part IV was mentioned as 01.07.2024. The Respondent filed a reply to the Section 9 application refuting the submissions. The Adjudicating Authority passed an order permitting the Appellant to file an affidavit by order dated 28.01.2025 that application is maintainable. An Affidavit was filed by the Operational Creditor in response to the order on 22.04.2025. The Adjudicating Authority heard the parties and by impugned order rejected the application. Adjudicating Authority after noticing the agreement dated 26.02.2020 and subsequent events came to the conclusion that dispute is purely commercial in nature and arising out of contract agreement and the Applicant cannot be permitted to use the forum as recovery mechanism. Application was dismissed with cost of Rs.25,000/- to be deposited in Prime Minister's

National Relief Fund. Aggrieved by which order this appeal has been filed.

3. We have heard Shri Nalin Kohli, learned senior counsel appearing for the Appellant. Shri Nalin Kohli in support of the appeal submits that the mere fact that Mr. Montek Mayal was no longer in employment of the Appellant does not affect the capacity of the Appellant to peform its obligation as per the agreement dated 26.02.2020. It is submitted that the fee structure as provided in the agreement clearly included the fee for Mr. James Nicholson, Senior Managing Director whose fee was higher than of Mr. Montek Mayal, Senior Managing Director. It is submitted that service which was provided to the Respondent for which invoices were issued were fully covered in the scope of the agreement dated 26.02.2020 and the Corporate Debtor having not paid the invoices which arose from the work performed under the agreement, the Respondent has committed default in paying agreed amount of fee, due to which the default is default of an operation debt entitling the Appellant of filing a Section 9 application. In reply to demand notice dated 25.07.2024, the Respondent does not refer to any correspondence or documents showing any pre-existing dispute existed there prior to issuance of demand notice dated 15.07.2024. The Respondent has not denied of various expert reports and attendance of arbitration hearing and other details mentioned in the invoices. Services were provided in time in Phase 1 & 2 and Phase 3 & 4 for which invoices were issued in the year 2022 and 2023. Outstanding invoices were not paid

despite of repeated follow-up emails. Budget for payment of fee was also approved by the Respondent. The Adjudicating Authority erroneously observed that certain invoices pertain to the same work allegedly performed by Osborne Partners. Services were provided by the Appellant till 29.09.2022 and invoices were raised between May, 2022 to February, 2023 and no contemporaneous dispute or objection were raised either as to invoice amount or underlying service. Contract with Osborne Partners was executed on 01.06.2023 approximately nine months after service of outstanding invoices were completed. Even if Osborne Partners provided any overlapping services, the same cannot be under any law or facts absolve the Respondent from servicing its debt under the subsisting service contract. Observation of the Adjudicating Authority that outstanding invoice raised by the FTI were contractual in nature and not genuine is not sustainable. The observation of the Adjudicating Authority that present dispute is purely commercial and beyond purview of the NCLT also cannot be supported. When the operational debt was due, the Appellant was fully entitled to invoke proceedings under Section 8 and 9 of the I&B Code. Neither the Respondent nor in the impugned order any pre-existing dispute has been identified against the claim of the Appellant. The Respondent failed to produce any correspondence or document prior to demand notice to prove that ingredients of pre-existing dispute are satisfied and the Adjudicating Authority committed error in rejecting the Section 9 application.

4. We have considered the submission of learned counsel for the Appellant and perused the record.

5. The agreement entered with the Appellant by the Respondent and its legal advisor – Three Crowns LLP is reflected in correspondence dated 26.02.2020 sent by Appellant to both Respondent and Three Crowns LLP. Para 1 of the letter contains the statement that Respondent and Tree Crowns LLP, legal advisor has agreed to engage the Appellant to provide independent expert services in relation to certain claims by MGFD and others (together, “claimants”) against Emaar MGF Land Limited and others (together, "Respondents"). Requirement of Respondent has also been noticed in Para 6 of the letter dated 26.02.2020, which is as follows:

> *“6. We understand that you require independent expert services to quantify the financial losses allegedly sustained by the Claimants due to the Respondents' aforementioned breaches, and to respond to any counterclaim that may be put forward by the Respondents.”*

6. Para 9, 10 and 11 refer to different phases of work, which are as follows:

> *“9. We confirm that, at this stage ("Phase 1"), MGFD and Counsel have asked us to carry out a preliminary review of the principal case documents and the available evidence with respect to the losses allegedly suffered by the*

Claimants. For that purpose, we will review the following information:

(1) *an overview of the legal claim including a timeline of key events, copies of any supporting documents relating thereto, and the relevant documents relating to the Demerger and the assets forming part of the Demerger;*

(2) *electronic versions of financial model(s) and projection(s) for the relevant assets (land parcels and development rights) that form the subject matter of the current dispute, and any supporting documents or electronic files relating thereto;*

(3) *feasibility reports, business plans, or other valuation documents for the land parcels and development rights; and*

(4) *relevant information relating to the Claimants, including their financial and operating performance over the relevant period.*

10. *We will discuss our findings with MGFD and Counsel after our initial review of information.*

11. *In respect of subsequent phases of work:*

(1) *in Phase 2, we will prepare a comprehensive independent expert report setting out our detailed assessment of the*

Claimants' losses based on the work done in Phase 1;

(2) in Phase 3, you will likely require a separate detailed independent expert report to be submitted in response to any expert evidence filed by the Respondents; and

(3) in Phase 4, should the matter proceed to a hearing, you will also require assistance in addressing damages and financial issues, providing expert testimony at the hearing, and assistance with any damages or financial issues that may arise after the hearing."

7. Para 12 of the letter contained a statement that Mr. Montek Mayal will be primary contact for the matter. Para 12 of the letter is as follows:

*"12. Mr Montek Mayal ("**Mr Mayal**"), Senior Managing Director in FTI Consulting's Economic and Financial Consulting practice in India, will be the primary contact for this matter. Mr Mayal together with Mr James Nicholson ("**Mr Nicholson**"), Senior Managing Director of FTI Consulting based in Singapore, will be responsible for the planning, coordination, and completion of this engagement"*

8. It is admitted fact that Mr. Montek Mayal was no longer in employment of the Appellant w.e.f. 14.01.2022. The Adjudicating Authority while noticing the submission of the Applicant/ Appellant in Para (xiii) has noted following:

> *"xiii. It is submitted that Mr. Mayal left the Operational Creditor's employment on 14.01.2022 however the Operational Creditor provided services to the Corporate Debtor till 29.09.2022 i.e., after the conclusion of the 'liability hearings' as part of Phase 4 of the services and the budget for the trial and liability hearings' was approved in advance by the Corporate Debtor on 11.07.2022 July 2022 which is after Mr. Mayal's exit from the Operational Creditor. The liability hearings' were held in July 2022 were attended by the Operational Creditor's team of employees including Mr. Nicholson, and in the absence of Mr. Mayal"*

9. In the present case, notice under Section 8(1) i.e. Demand Notice was issued by the Appellant dated 15.07.2024. Demand notice referred to the transaction dated 26.02.2020 between the parties and details regarding issuance of various invoices which invoices were annexed along with the demand notice. The Corporate Debtor was called upon to make payment of Rs.2,36,14,877/- as principal amount, which is amount outstanding to four invoices. Scheme of Section 8 and 9 as delineated by I&B Code is as follows:

> ***"8. Insolvency resolution by operational creditor. –*** *(1) An operational creditor may, on the*

occurrence of a default, deliver a demand notice of unpaid operational debt or copy of an invoice demanding payment of the amount involved in the default to the corporate debtor in such form and manner as may be prescribed.

(2) The corporate debtor shall, within a period of ten days of the receipt of the demand notice or copy of the invoice mentioned in sub-section (1) bring to the notice of the operational creditor—

(a) existence of a dispute, [if any, or] record of the pendency of the suit or arbitration proceedings filed before the receipt of such notice or invoice in relation to such dispute;

(b) the [payment] of unpaid operational debt—

(i) by sending an attested copy of the record of electronic transfer of the unpaid amount from the bank account of the corporate debtor; or

(ii) by sending an attested copy of record that the operational creditor has encashed a cheque issued by the corporate debtor.

Explanation.—For the purposes of this section, a "demand notice" means a notice served by an operational creditor to the corporate debtor demanding [payment] of the operational debt in respect of which the default has occurred.

9. Application for initiation of corporate insolvency resolution process by operational

creditor. *– (1) After the expiry of the period of ten days from the date of delivery of the notice or invoice demanding payment under sub-section (1) of section 8, if the operational creditor does not receive payment from the corporate debtor or notice of the dispute under sub-section (2) of section 8, the operational creditor may file an application before the Adjudicating Authority for initiating a corporate insolvency resolution process.*

(2) The application under sub-section (1) shall be filed in such form and manner and accompanied with such fee as may be prescribed.

(3) The operational creditor shall[J2], along with the application furnish—

(a) a copy of the invoice demanding payment or demand notice delivered by the operational creditor to the corporate debtor;

(b) an affidavit to the effect that there is no notice given by the corporate debtor relating to a dispute of the unpaid operational debt;

(c) a copy of the certificate from the financial institutions maintaining accounts of the operational creditor confirming that there is no payment of an unpaid operational debt [by the corporate debtor, if available;]

[(d) a copy of any record with information utility confirming that there is no payment of an unpaid

operational debt by the corporate debtor, if available; and

(e) any other proof confirming that there is no payment of any unpaid operational debt by the corporate debtor or such other information, as may be prescribed.]

(4) An operational creditor initiating a corporate insolvency resolution process under this section, may propose a resolution professional to act as an interim resolution professional.

(5) The Adjudicating Authority shall, within fourteen days of the receipt of the application under sub-section (2), by an order—

(i) admit the application and communicate such decision to the operational creditor and the corporate debtor if,—

(a) the application made under sub-section (2) is complete;

(b) there is no [3][payment] of the unpaid operational debt;

(c) the invoice or notice for payment to the corporate debtor has been delivered by the operational creditor;

(d) no notice of dispute[J6] has been received by the operational creditor or there is no record of dispute in the information utility; and

(e) there is no disciplinary proceeding pending[4] against any resolution professional proposed under sub-section (4), if any.

(ii) reject the application and communicate such decision to the operational creditor and the corporate debtor, if—

(a) the application made under sub-section (2) is incomplete;

(b) there has been [payment] of the unpaid operational debt;

(c) the creditor has not delivered the invoice or notice for payment to the corporate debtor;

(d) notice of dispute has been received by the operational creditor or there is a record of dispute in the information utility; or

(e) any disciplinary proceeding is pending[4] against any proposed resolution professional:

Provided that Adjudicating Authority, shall before rejecting an application under sub-clause (a) of clause (ii) give a notice to the applicant to rectify the defect in his application within seven days of the date of receipt of such notice from the adjudicating Authority.

(6) The corporate insolvency resolution process shall commence from the date of admission of the application under sub-section (5) of this section."

10. As per Section 8, an Operational Creditor on occurrence of default may deliver a demand notice of unpaid operational debt demanding payment. Under Section 8 (2) provides that the Corporate Debtor shall be within a period of ten days of the receipt of the demand notice bring to the notice of the operational creditor (a) existence of a dispute (b) the payment of unpaid operational debt. Section 8(2) is quoted above.

11. Clause (a) of Sub-section (2) of Section 8 uses expression '*existence of a dispute, if any, or record of the pendency of the suit or arbitration proceedings filed before the receipt of such notice or invoice in relation to such dispute'*. Clause (a), thus, is divided into two parts i.e. Corporate Debtor to bring into the notice of the Operational Creditor (i) existence of dispute; or (ii) record of pendency of the suit or arbitration proceeding filed before the receipt of such notice or invoice in relation to such dispute. Thus, present is a case where in respect to the demand notice, notice of dispute was given by the Respondent vide its letter dated 25.07.2024. Reply notice dated 25.07.2024 categorically pleaded in Para 2 that reply is complete and effective service of Notice of Dispute. Para 2 of the reply of demand notice dated 25.07.2024, as follows:

> *"2. The present reply not only addresses the contents of the Demand Notice dated 15th July, 2024 on merits but is also a Notice of Dispute under Section 8(2) of the Insolvency and Bankruptcy Code, 2016 (IBC, 2016) and shall be treated as complete and effective service of Notice of Dispute for all legal and practical*

purposes under the provisions of Section 8(2) of Insolvency and Bankruptcy Code, 2016 as amended upto date."

12. Now we come to Section 9 which deals with the 'Application for initiation of corporate insolvency resolution process by operational creditor'. Section 9 (5) contemplates that the Adjudicating Authority shall within fourteen days of the receipt of the application by an order either admit or reject the application. Section 9 (5), which is relevant in the present case is as follows:

"9*(5) The Adjudicating Authority shall, within fourteen days of the receipt of the application under sub-section (2), by an order—*

(i) admit the application and communicate such decision to the operational creditor and the corporate debtor if,—

(a) the application made under sub-section (2) is complete;

(b) there is no [payment] of the unpaid operational debt;

(c) the invoice or notice for payment to the corporate debtor has been delivered by the operational creditor;

(d) no notice of dispute has been received by the operational creditor or there is no record of dispute in the information utility; and

(e) there is no disciplinary proceeding pending[4] against any resolution professional proposed under sub-section (4), if any.

(ii) reject the application and communicate such decision to the operational creditor and the corporate debtor, if—

(a) the application made under sub-section (2) is incomplete;

(b) there has been [payment] of the unpaid operational debt;

(c) the creditor has not delivered the invoice or notice for payment to the corporate debtor;

(d) notice of dispute has been received by the operational creditor or there is a record of dispute in the information utility; or

(e) any disciplinary proceeding is pending[4] against any proposed resolution professional:

Provided that Adjudicating Authority, shall before rejecting an application under sub-clause (a) of clause (ii) give a notice to the applicant to rectify the defect in his application within seven days of the date of receipt of such notice from the adjudicating Authority."

13. Section 9 Sub-section (5) Clause (ii) Sub-clause (d) provides that the Adjudicating Authority shall reject the application if notice of dispute has

been received by the Operational Creditor or there is record of dispute in the information utility. The Adjudicating Authority after noticing the case of both the Applicant/ Appellant and the Respondent come to the conclusion that application filed by the Appellant is a dispute purely commercial in nature which arises out of a contract/agreement and the Applicant cannot be permitted to use this forum as a recovery mechanism. In Para 6(xxii) following has been held:

> *"xxii. Further, we agree with the submissions of the Corporate Debtor that the present dispute is purely commercial in nature which arises out of a contract/agreement and the Applicant cannot be permitted to use this forum as a recovery mechanism. The present application is devoid of any merits and dismissed with a cost of Rs. 25,000/- to be deposited in Prime Minister's National Relief Fund"*

14. Before we proceed further, we need to notice reply to demand notice dated 25.07.2024 to examine as to whether the said reply dated 25.07.2024 can be said to be notice of dispute within the meaning of Section 8 (2). As noted above, the reply to the demand notice dated 25.07.2024 in Para 2 has categorically pleaded that the reply shall be treated as complete and effective service of notice of dispute. Claim which was referred by the Appellant in the demand notice has been refuted and denied in the reply to the demand notice. In Para 7.5 of the reply to the demand notice, it was pleaded that agreement unequivocally states that the primary contact for the contract

would be Mr Montek Mayal. Para 7.5 of the reply to the demand notice is as follows:

> *"7.5: Clause 12 of the agreement unequivocally states that the Primary Contact for the Contract would be Mr Montek Mayal, who was described as a Senior Managing Director in FTI Consulting, Economic and Financial Consulting Practice in India."*

15. Para 8 to 15 of the reply are relevant which gives the case set up by the Respondent in the reply notice opposing the claim of the Appellant. Paras 8 to 15 are as follows:

> *"8. Our Client instructs us to state that the services to be rendered in the form of Expert Evidence was to be rendered by Mr Montek Mayal as he was the Expert Witness named in the list of witnesses by our Client in the arbitration proceedings before ICC, London.*
>
> *9. In the meanwhile, the legal advisors advising our Client, was changed from Three Crowns LLP to Taylor Wessing LLP and an intimation for the same was also recorded by all 3 signatories to the earlier letter agreement.*
>
> *10. It appears that your Client's claim is premised on certain invoices raised by FTI Consulting India Pvt Limited for alleged services rendered including "For preparation of trial and trial attendance".*
>
> *11. Our Client instructs us to state that no such services were in fact rendered by your Client. Our*

Client instructs us to state that to the extent of services rendered by your Client, more than the legitimate fee due and payable, were duly paid to FTI Consulting India Private Limited.

12. Our Client instructs us to state that an amount of USD 219600 (equivalent to approximately INR 1.80 crores) stands paid by our Client to FTI Consulting India Private Limited which fact also stands acknowledged by your Client FTI Consulting India Private Limited.

13.Our Client instructs us to state that the amount USD 219600 was released by our Client even though our Client bonafidely believes that corresponding services to the extent of value of payment made were not rendered.

14. Our Client further instructs us to state that the payment of USD 219600 was released even though the Agreement itself capped the fees infact rendered by your Client at USD 30,000. The amounts released by our Client comes out to nearly 7 times over and above the capped fee.

15. Our Client instructs us to state that in meanwhile, it was informed to our Client that Mr. Montek Mayal, the Expert Witness for our Case before ICC, London, was no longer associated with your Client FTI Consulting India Private Limited, as such the services with regards to valuation and damages opinion and the Expert Evidence will now be rendered by him in the name of his business entity called Osborne

Partners. Since our Client had already named Mr Montek Mayal as its Expert Witness in the ICC London Arbitration against Emaar MGF Land t Limited, Our Client was constrained to continue with the services of Mr Montek Mayal."

16. The first question to be answered is as to whether reply notice dated 25.07.2024 can be said to be notice of dispute since in event the said reply can be held to be notice of dispute within meaning of Section 8(2) the application was liable to be rejected under Section 9(5)(ii)(d).

17. Learned counsel for the for the Appellant has submitted that there was no pre-existing dispute between the parties since prior to demand notice dated 15.07.2024 there is no correspondence or material to indicate that any pre-existing dispute was communicated by the Respondent to the Appellant. Section 8(2), as noted above, refers to expression 'existence of dispute' and the Corporate Debtor after receiving the demand notice has within 10 days brought into notice of the Operational Creditor existence of dispute. It is true that existence of dispute has to be on a date prior to receipt of demand notice, which is a settled law.

18. In the present case, we need to examine as to whether the facts as pleaded in the reply to demand notice dated 25.07.2024 can be read to mean as existence of dispute. In this reference we need to notice judgment of Hon'ble Supreme Court in ***"Mobilox Innovations Pvt. Ltd. Vs. Kirusa Software Pvt. Ltd., (2018) 1 SCC 353".*** Hon'ble Supreme Court in the

above case had occasion to examine Section 8(2)(a) i.e. existence of dispute. In Para 34, the Hon'ble Supreme Court laid down following:

> *"**34.** Therefore, the adjudicating authority, when examining an application under Section 9 of the Act will have to determine:*
>
> *(i) Whether there is an "operational debt" as defined exceeding Rs 1 lakh? (See Section 4 of the Act)*
>
> *(ii) Whether the documentary evidence furnished with the application shows that the aforesaid debt is due and payable and has not yet been paid? and*
>
> *(iii) 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 of the unpaid operational debt in relation to such dispute?*
>
> *If any one of the aforesaid conditions is lacking, the application would have to be rejected. Apart from the above, the adjudicating authority must follow the mandate of Section 9, as outlined above, and in particular the mandate of Section 9(5) of the Act, and admit or reject the application, as the case may be, depending upon the factors mentioned in Section 9(5) of the Act."*

19. Explaining the existence of dispute, the Hon'ble Supreme court laid down that it has to be examined whether there is 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. In Para 51 of the judgement following was laid down:

> *"**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."*

20. When we look into the facts of the present case, it transpires that Appellant through Mr. Montek Mayal entered into agreement to provide

independent expert service in relation to certain claims by the Respondent against Emaar MGF Land Limited pending in ICC, London. According to Clause 12 of the Agreement, Mr. Montek Mayal, Senior Managing Director was primary contact in the matter and agreement in Para 27 stated that it was Mr. Montek Mayal who was to be contacted for all queries. The services which were being provided by the Appellant was through Mr. Montek Mayal with another Senior Managing Director, Mr. James Nicholson and other staff. There is no dispute that under the contract services were started being provided by the Appellant and various invoices were issued. Invoices have also been paid by the Corporate Debtor to the extent of more than Rs.3 Crores.

21. It is admitted fact that Mr. Montek Mayal left the service of the Appellant w.e.f. 14.01.2022. The Respondent, however, continued to receive services of Mr. Montek Mayal through its business entity Osborne Partners. The agreement dated 01.06.2023 between the Respondent and Osborne Partners has been brought on the record which was sent by the Respondent along with the reply to demand notice dated 25.07.2024. Osborne Partners with Respondent entered into agreement on 01.06.2023, it was pleaded in the reply notice that Respondent was taking services of Mr. Montek Mayal in connection to very same work, which was initially assigned to the Appellant. It is on the record that work which was divided into Phase 1 to 4 allotted to the Appellant under the Agreement dated 26.02.2020 and the agreement dated 01.06.2023 also, the work has been overlapping. When we look into

the letter dated 01.06.2023, the letter indicates that work of Phase 1 by Osborne Partners is completed and fee is payable on signing the letter. It clearly indicates that the work by Osborne Partners was entrusted much prior to 01.06.2023. It is useful to notice following statement in letter dated 01.06.2023:

> *"In Phase 1, we have been asked to prepare and submit an expert report setting out the value of Emaar India for the period 2020 to 2Q23 based on the financial statements and other publicly available information for Emaar Properties PJSC and its subsidiaries. Based on our current understanding of the scope for Phase1, we will agree to a fixed fee of USD 50K. The work is complete, and the fee Is payable on signing of this letter."*

22. In the reply the demand notice, the Respondent has also filed relevant details of various payments made to Mr. Montek Mayal through its business entity Osborne Partners amounting to Rs.2.07 Crores. The said statement has been made in Para 19 of the reply to the demand notice, which is as follows:

> *"19. Our Client instructs us to state that it has paid a total sum of USD 469,600 (equivalent to approximately INR 3.88 crores) to Mr. Montek Mayal comprising of a payment of USD 219600 (equivalent to approximately INR 1.8 crores) to Mr. Montek Mayal acting for and on behalf of FTI Consulting India Private Limited and a further sum of USD 250,000*

(equivalent to approximately INR 2.07 crores) to Shri Montek Mayal acting in the name of Osborne Partners."

23. The details of payment in the reply to Section 9 application was filed by the Respondent. Details of payment to Mr. Montek Mayal through its entity Osborne Partners have also been brought on the record, which were of different date from 09.08.2023 to November, 2023 and payment of about Rs.2.07 Crores were made to Mr. Montek Mayal through Osborne Partners in the year 2023.

24. In reply to Section 9 application, the Respondent has come with the categorical case that issue sought to be raised by the Appellant in Section 9 application cannot be determined in Section 9 proceeding. It is useful to notice pleadings in Para 4 of the reply, which is as follows:

"4. It is respectfully submitted that the present matter is a classic commercial dispute arising out of alleged non-performance and differing interpretations of a service agreement between two parties. The claims of the Applicant relate to quantum of fees, alleged continuation of services, and scope of work all of which are matters falling within the realm of contractual interpretation and evidentiary evaluation, which can only be adjudicated by a competent civil court. The Insolvency and Bankruptcy Code, 2016, and the jurisdiction of this Hon'ble Adjudicating Authority under Section 9, are not intended to be invoked for such disputes. As held in Mobilox Innovations Pvt. Ltd. v. Kirusa Software Pvt. Ltd.

> *[(2018) 1 SCC 353], the IBC is not a substitute for a recovery forum. The Adjudicating Authority under the IBC is not expected to enter into complex factual determinations regarding disputed invoices or frustrated performance."*

25. The respondent has further pleaded that in view of Mr. Montek Mayal being no longer associated with the Appellant, the agreement with the Appellant stood frustrated. In Para 15, 16 and 18 of the reply following has been pleaded:

> *"15. It is significant to note that Mr. Mayal had already been disclosed as the expert witness on behalf of the Corporate Debtor in the ongoing ICC arbitration proceedings. The Service Agreement was entered into specifically based on Mr. Mayal's professional expertise and personal involvement. Consequently, his exit from the Applicant disrupted the structure of the engagement and frustrated the purpose of the contract. Therefore, the Corporate Debtor was constrained to enter into a new agreement with Mr. Mayal through Osborne Partners, dated 01.06.2023. A copy of the agreement dated 01.06.2023 executed between the Corporate Debtor and Osborne Partners is annexed herewith and marked as Annexure R/2. 16. That it is respectfully submitted that no amount whatsoever is due or payable to the Applicant. The Corporate Debtor has already made substantial payments well in excess of the value of the services actually rendered under the Service Agreement. Further, the Corporate Debtor*

exclusively engaged with Osborne Partners, an independent consultancy firm, pursuant to a new agreement entered into following the departure of Mr. Montek Mayal from the Applicant. Under this new engagement, the Corporate Debtor disbursed over Rs. 2 crore to Osborne Partners for expert services rendered in the said arbitration. A copy of the invoice raised by the Osborne Partners is annexed herewith and marked as Annexure R/3. Copy of the details of payments made to Osborne Partners, for Mr. Mayal, is annexed herewith and marked as Annexure R/4.

18. It is pertinent to mention at this stage that in terms of Section 56 of the Indian Contract Act, 1872, a contract stands discharged by frustration when a supervening event destroys the foundation or mode of performance contemplated by the parties. Mr. Mayal's exit from the Applicant constituted such an event. Following his departure, no further services were rendered by FTI, nor were any accepted or authorised by the Corporate Debtor. The mere raising of unilateral invoices without supporting, performance, or mutual agreement cannot create any binding liability on the Corporate Debtor."

26. From what we have noticed above, it is on the record that there are sufficient facts and material brought by the Respondent in the reply to demand notice as well as reply to the Section 9 application that there was issue regarding performance of contract by the Appellant through Mr. Montek Mayal who left the Appellant w.e.f. 14.01.2022. Even after 14.01.2022 payments have been made by the Respondent to the invoices

sent by the Appellant. The submission of the Appellant that there was no dispute on the date when demand notice was issued is not acceptable. Dispute regarding performance of contract has already surfaced after Mr. Montek Mayal left the Appellant's company w.e.f. 14.01.2022 whereas Mr. Montek Mayal was the face of the Company for the Respondent and agreement was entered for Mr. Montek Mayal through Appellant and it was Mr. Montek Mayal who was cited as witness for the Respondent in the arbitration proceeding pending in the ICC, London. Admittedly, the Corporate Debtor has continued the services of Mr. Montek Mayal after he left the Appellant's company on 14.01.2022 through its another business entity Osborne Partners. Agreement with Osborne Partners dated 01.06.2023 and payments made to Osborne Partners are all on the record. All these facts existed / happened much prior to issuance of demand notice i.e. 15.07.2024. Non-payment of invoices fully, which was raised by the Appellant is due to the reason as indicated in the reply notice as well as reply to the Section 9 application by the Respondent.

27. Proceeding under Section 9 are proceedings for initiation of insolvency against a Corporate Debtor who fail to make payment after receipt of demand notice provided notice of dispute has not been given by the Corporate Debtor. Section 9 proceeding are not proceeding where contractual dispute between the parties for payment of fee or services can be examined and adjudicated. Present is not a case where claim raised by the Appellant is admitted by the Respondent.

28. Hon'ble Supreme Court in ***"S. S. Engineers vs. Hindustan Petroleum Corporation Ltd. & Ors., 2022 SCC OnLine SC 1385"*** held that Operational Creditor can trigger CIRP process when there is an undisputed debt. In Para 32 following was held:

> *"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, 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."*

29. In view of the foregoing discussion, we are satisfied that the reply to demand notice dated 25.07.2024 issued by the Respondent was notice of dispute within the meaning of Section 8 Sub-section (2) of the I&B Code and in view of the notice of dispute having been given by the Respondent to the Appellant and notice of dispute raised plausible contention which required further investigation and defence raised by the Respondent is not patently feeble legal argument or an assertion of fact unsupported by evidence. Sufficient material has been brought by the Respondent in reply to demand

notice as well as reply to the Section 9 application regarding the contract with the Appellant dated 26.02.2020 and subsequent continued obtaining of service by the Respondent from Mr. Montek Mayal, who entered into agreement with Respondent through another entity Osborne Partners. We, thus are satisfied that notice of dispute having been given by the Respondent to the Corporate Debtor, which dispute are dispute which cannot be said to be patently feeble legal argument or an assertion of fact unsupported by evidence, the Adjudicating Authority did not commit any error in rejecting Section 9 application filed by the Appellant. We, thus, do not find any ground to interfere with the order passed by the Adjudicating Authority rejecting Section 9 application. There is not merit in the appeal. Appeal is dismissed.

[Justice Ashok Bhushan]
Chairperson

[Barun Mitra]
Member (Technical)

NEW DELHI

23rd December, 2025

Archana