



INSOLVENCY & BANKRUPTCY

Pre-existing Dispute or Mere Moonshine? Supreme Court Unravels the Section 9 Gateway Under the IBC

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The Supreme Court of India has, yet again, stepped in to arrest the creeping tendency of corporate debtors to stall Corporate Insolvency Resolution Process (CIRP) by raising spurious defences. In *M/s. Saraswati Wire & Cable Industries v. Mohammad Moinuddin Khan & Ors.* [Civil Appeal No. 12261 of 2024, decided on 10 December 2025 – 2025 INSC 1410], a Division Bench of Sanjay Kumar and Alok Aradhe, JJ. set aside a 13 March 2024 order of the National Company Law Appellate Tribunal (NCLAT) and restored the admission order passed by the National Company Law Tribunal, Mumbai Bench-IV, thereby allowing the operational creditor's Section 9 petition under the Insolvency & Bankruptcy Code, 2016 (IBC) to proceed.

The appellant, a registered partnership firm carrying on business in wires and cables, supplied goods to the corporate debtor, Dhanlaxmi Electricals Private Limited, a licensed engineering company executing turnkey contracts. The dealings were on a running-account basis. On 31 July 2021 the firm forwarded its ledger to the debtor seeking confirmation; the debtor's Accounts Manager responded on 4 August 2021, verifying the debit balance at ₹ 2,49,93,690.80 after adjusting three minor debit notes. Between June and August 2020, the debtor had already paid ₹ 70 lakh; thereafter, and crucially, after the firm issued a statutory demand notice under Section 8 of the IBC on 25 August 2021 claiming ₹ 1.79 crore as principal plus interest, the debtor remitted a further ₹ 61 lakh. Yet, when the firm filed its Section 9 application on 10 February 2023, the debtor chose to contest admission on the ground that the debt was the subject of a "pre-existing dispute".

The timeline is important. On 6 September 2021 another operational creditor had already initiated CIRP against the debtor; the firm therefore lodged its claim with the Interim Resolution Professional (IRP) appointed in those proceedings. It came to know only in June 2023 that the IRP had sought withdrawal of that CIRP under Section 12-A; within eight months of the withdrawal order (22 June 2023) the NCLT admitted the firm's own petition (6 December 2023). Mohammad Moinuddin Khan, a suspended director of the corporate debtor, appealed to the NCLAT. The Appellate Tribunal, placing reliance on certain e-mail exchanges of 2018-2019 relating to two invoices and alleged short-supply of cables, concluded that a pre-existing dispute existed and set aside the admission order.

Before the Supreme Court the operational creditor contended that the so-called disputes were an after-thought, that the debtor's own books acknowledged the debt, and that the reply dated 20 November 2021 on which the NCLAT had heavily relied was a nullity because the Director of the Corporate Debtor stood suspended and had no authority to speak for the corporate debtor. The respondent, on the other hand, insisted that the issues of non-supply against two invoices (Nos. 203 and 205), short-supply of 80 km of cable and the resultant counter-claim of ₹ 67.96 lakh constituted a bona-fide dispute that ought to defeat the Section 9 petition.

The Court framed three core questions: whether a pre-existing dispute truly existed; whether the November 2021 reply could be treated as the corporate debtor's valid defence; and whether the subsequent conduct particularly continued payments obliterated the plea of dispute.

Guiding itself by the ratio in *Mobilox Innovations Private Limited v. Kirusa Software Private Limited* (2018) 1 SCC 353, the Bench reiterated that at the admission stage the adjudicating authority is obliged only to screen out "moonshine" or "bluster" defences and need not undertake an exhaustive merits review. The jurisprudential lineage *Amalgamated Commercial Traders (P) Ltd. v. A.C.K. Krishnaswami* (1965) 35 Comp Cas 45, *Madhusudan Gordhandas & Co. v. Madhu Woollen Industries* (1971) 3 SCC 632, *Mediquip Systems (P) Ltd. v. Proxima Medical System GmbH* (2005) 7 SCC 42 and *Vijay Industries v. NATL Technologies Limited* (2009) 3 SCC 527 was pressed into service to hold that the defence must be substantial and not a mere fig-leaf. More recent affirmations in *Indus Biotech Private Limited v. Kotak India Venture (Offshore) Fund* (2021) 6 SCC 436 and *Tata Consultancy Services Limited v. SK Wheels Private Limited* (2022) 2 SCC 583 fortified the proposition that the corporate debtor cannot be permitted to frustrate the insolvency timeline by raising hypothetical pleas.

On facts, the Court found that the debtor's ledger account, signed and circulated on 4 August 2021, had already accepted the debit balance after factoring in the very debit notes now relied upon. Delivery challans, e-way bills and transport bills produced by the firm prima-facie established that the two impugned invoices had indeed been honoured; the belated plea regarding carrying capacity of the truck was brushed aside as a desperate after-thought. The figure of faulty cable mysteriously grew from 20,000 metres (December 2018) to 80 kilometres (November 2021) without any contemporaneous documentation or client complaint. Most damagingly, the corporate debtor continued to pay the creditor long after the alleged disputes were raised conduct wholly at odds with the stance that the debt was genuinely contested.

The Court held that the reply of the suspended Technical Director, issued when management had already vested in the IRP appointed in the first CIRP, was non-est and could not be recognised as the corporate debtor's valid defence. Consequently, the

plea of pre-existing dispute was mere moonshine and did not satisfy the low-threshold Mobilox test.

In the result, the appeal was allowed, the NCLAT’s order was set aside and the admission order dated 6 December 2023 passed by the NCLT was restored. The CIRP shall now proceed in accordance with law from the date of communication of the judgment. Each party will bear its own costs.

The decision re-asserts the legislative intent of the IBC: a corporate debtor cannot be permitted to blow hot and cold accepting the debt in its books, continuing to make payments, and yet crying “dispute” when an operational creditor knocks on the insolvency door.

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