

**In the National Company Law Tribunal  
"Chandigarh Bench, Chandigarh"  
(Exercising the powers of Adjudicating Authority under  
the Insolvency and Bankruptcy Code, 2016)**

**CP (IB) NO. 33/Chd/Hry/2017**

**Under Section 9 of Insolvency &  
Bankruptcy Code, 2016.**

In the matter of:

M/s Aggcon Equipments International (P) Ltd, Regd. Office at 67-P,  
Badarpur Chowk, Near Central Bank of India, New Delhi-110044  
Corporate Office at 1333, (LGF), Sector 28, Faridabad-121008, Haryana  
India.

.. Petitioner/Operational Creditor.

Versus.

M/s Isolux Corsan India Engineering & Construction Pvt. Ltd., 1st Floor,  
Splendor Towers, Golf Course Extension Road, Sector-65, Gurgaon (Now  
Gurugram)-122001.

....Respondent/Corporate Debtor.

**Order delivered on 21.07.2017**

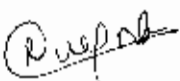
**Coram: Hon'ble Mr.Justice R.P.Nagrath, Member (Judicial).**

For the petitioner/Operational Creditor      Mr. Ashok Kumar Jindal, Advocate.

For the respondent/  
Corporate Debtor:      Mr.Vineet Tayal, Advocate.

**Order**

This petition is filed by M/s Aggcon Equipments International (P) Ltd., an 'Operational Creditor' under Section 9 of the insolvency & Bankruptcy Code, 2016 (for short to be here-in-after as the



'Code') for initiating the Corporate Insolvency Resolution Process against M/s Isolux Corsan India Engineering & Construction Pvt. Ltd. (for brevity ICI). The petition has been filed with the application in Form 5 as provided in rule 6(1) of the Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016 (for brevity the 'Rules').

2. Part-III of Form 5 refers to the particulars of the proposed Interim Resolution Professional. In this case, the petitioner has not proposed any Insolvency Resolution Professional. As per sub-section (4) of Section 9 of the Code, an Operational Creditor initiating the corporate insolvency resolution process under this Section, may propose an Interim Resolution Professional to act as an Interim Resolution Professional. So, it is not mandatory for the petitioner to propose the name of the Interim Resolution Professional (for brevity 'IRP'). The above proposition is further clarified from sub-section (3) of Section 16 of the Code, which says that in case the IRP is not proposed, the Adjudicating Authority shall make a reference to the Insolvency & Bankruptcy Board of India (IBBI) for recommending an Interim Resolution Professional, who may act as an IRP.

3. The petitioner is a Body Corporate constituted under the Companies Act, 1956 and the Certificate of incorporation of the petitioner is part of Annexure P-2 (Colly) with which the Memorandum & Articles of Association are attached. The Board of Directors of the petitioner company passed a resolution dated 02.05.2017 authorising Mr. Jatinder Kumar Aggarwal & Padam Singh Rawat jointly and severally to initiate the corporate insolvency resolution process against "M/s Isolux Corsan India Engineering & Construction Pvt. Ltd. Gurgaon" and "C&C Constructions

*Rup*

Ltd., New Delhi" (for brevity C&C) and to do all the necessary acts in the progress of the case etc. including, filing and signing of petitions, caveats, applications, suits and to make statements etc. in the progress of the case. Copy of the resolution of the Board of Directors is at Annexure P-1. The contents of the application are supported by the affidavit of Mr Padam Singh Rawat, one of the authorised persons.

4. The 'Corporate Debtor' was incorporated on 25.06.2008 with its nominal share capital of ₹65 crores and the paid-up share capital of ₹60,60,00,000/- only. It has the registered office at Gurgaon (now Gurugram) in the State of Haryana. Therefore, the matter falls within the territorial jurisdiction of this Tribunal.

5. In Column No.7 of part-II of the application, name of Jatinder Kumar Aggarwal, Director of the company with his complete address is mentioned as the person authorised to accept service of process on behalf of the petitioner-'Operational Creditor' and in column No.6, name of the person submitting the application to the Tribunal is Padam Singh Rawat, the other authorised signatory of the petitioner.

6. The petitioner-'Operational Creditor' is engaged in the business of providing various types and capacity of machineries (Motor Graders) on hire basis. It is the version of the petitioner that ICI & C&C entered into a joint venture called 'JV' having its Corporate Office at Gurgaon entered into an agreement dated 26.05.2015 with the petitioner for hiring equipment from the petitioner for the work of development and construction of NH-2 Project of the total length of 107.40 Km in the State of Bihar. The petitioner agreed to supply 1 Nos. (Motor Grader CAT120-K2

*Deepa*

New) in good working condition; with its trained operators. The Machine was to be commissioned at ICI & C&C JV, site at Khurmabad, District Kalmur, Bihar @ ₹3,50,000/- per month on per operation month at the site towards hire-charges. For additional man power the 'JV' was liable to pay additional sum of ₹25,000/- per month on extra double operator and helper, apart from other terms and conditions. The other terms of the agreement were that the petitioner was to submit the bills with original log sheets at the end of the calendar month. Verification of the Bills was to be undertaken by ICI & C&C 'JV'. It was undertaken by ICI & C&C 'JV' to pay the bills within 30 days of submission of the verified bills. It was further stipulated that claims older than 02 weeks not clarified by the petitioner, shall be payable and decision of the Project Manager of 'JV' shall be final and binding. The duration of agreement was initially for a period of three months, but extendable with mutual consent. The duration of the agreement was extended from time to time and admittedly upto the months, for which the petitioner has claimed the debt to be in default. Copy of the original agreement-along with the additional agreements where-under the duration was extended from time to time is at Annexure P-3 from page 85 to 115. There is no dispute about the execution of agreement and its terms.

7. It is further stated that in pursuance of the agreed terms, the petitioner-'Operational Creditor' deployed the aforesaid machine during currency of the work order which was made functional and operational by the employees of the petitioner at the site. The machine was successfully utilized by ICI & C&C 'JV' at the site. The petitioner raised invoices monthly, which are at Annexure P-4 (Colly). It was clearly stipulated in the invoices

*(Signature)*

that the interest @ 24% will be charged on late payments and further that the contents of the bill shall be considered as correct, if no discrepancies are reported within seven days of receipt of the bill. The petitioner fulfilled all its obligation and discharged its duties as would be evident from duly signed invoices received by the 'Corporate Debtor' through post as well as emails exchanged between the parties, which are part of Annexure P-5 (Colly). The email communications also contain the stipulation that the contents of the bills would be considered as correct, if no discrepancies are reported within seven days. The Corporate Debtor never raised the dispute that the petitioner-'Operational Creditor' did not perform its obligations nor any dispute was raised till date. The petitioner sent various emails to the respondent-Corporate Debtor to make payments and copy of those emails are at Annexure P-6 (colly). Even as per their own confirmation, the admitted liability of the respondent-Corporate Debtor is ₹36,41,564/-. Even the ledger account of the respondent-Corporate Debtor for the period from 1st April, 2015 to 02.03.2017 prepared in the usual course of business would reveal that as on 26.12.2016, an amount of ₹36,31,742/- was the balance payable by the Corporate Debtor. The copy of Corporate Debtor's email of confirmation of accounts dated 30.01.2017 is part of Annexure P-7 (Colly). Copy of the ledger account of the 'Corporate Debtor' relating to period from 01.04.2015 to 31.03.2017 duly verified by its Chartered Accountant is Annexure P-8.

8. In view of the above, it is stated that a total principal sum of ₹36,31,742/- is due and payable by the 'Corporate Debtor' to the

'Operational Creditor' as on 26.12.2016 along with interest @ 24% per annum.

9. It is further stated that despite acknowledging these invoices, account statements, ledger and never raising any dispute regarding quality of machinery, labour and service at any stage, the Corporate Debtor sent an email dated 27.02.2017, Annexure P-9 asking the 'Operational Creditor' to take print out of attached final settlement agreement and sign and send it back to them with discounted amount. It is alleged that the terms of aforesaid settlement-agreement were unilaterally decided by the Corporate Debtor. The petitioner, however, still filled in the blanks of the said settlement agreement claiming the due amount with interest @ 24% per annum for the delayed period excluding the bills of October, November and December, 2016, which comes to ₹11,86,500 pending for amendment certification at ICI (Agreed outstanding) and sent the same to the 'Corporate Debtor' vide email dated 28.02.2017 (Colly).

10. The amount in default is claimed to be ₹36,31,742/- and after including the interest, the total amount of ₹41,44,311/- is stated to be due. The computation sheet is attached as Annexure P-13.

11. Before filing the instant petition, the petitioner sent a demand notice dated 04.04.2017, Annexure P-11 under Section 8 of the Code and as required by Rule 5 of the Rules. The demand notice addressed to 18 persons and the first is the Corporate Debtor-respondent and at No.8 is C&C Construction Limited with whom the Corporate Debtor has a joint venture (JV) agreement. Rest of the persons to whom the notice was sent are the Directors of these companies apart from others. Along

*Dr. P. R.*

with the notice, nine invoices/Bills under which the goods were sent were attached and the invoices relied upon by the petitioner are at Annexure P-4 (Colly) at page 116 to 154 of the paper book, which also form part of the demand notice Annexure P-11 (Colly) pages 324 to 436. The amount claimed to be in default is ₹36,31,742/-. The addressees including the respondent-Corporate Debtor were asked to pay the aforesaid amount with interest @ 24% per annum within ten days of the receipt of the notice. Along with this notice, the details of various transactions have also been attached. The goods supplied is Motor Grader on rental basis. The petitioner also attached the copy of various track reports of the postal department showing the items to have been delivered to most of the addressees more particularly to the respondent-Corporate Debtor.

12. The respondent-Corporate Debtor sent reply dated 20.04.2017 to the demand notice with email dated 21.04.2017 Annexure P-12. This petition was filed under Section 9 of the Code after expiry of ten days as stipulated under the said provision.

13. The matter was listed for the first time on 03.07.2017 and this is being disposed of within fourteen working days by excluding weekends as well as two days of 14<sup>th</sup> July and 17<sup>th</sup> July, 2017, when I was on official tour. It was contended that copy of this petition with the entire paper book was despatched to the respondent-Corporate Debtor by registered post on 15.06.2017 and copy of the track report in proof of the delivery of the same at the registered office of the respondent, was also attached.

*Rafiq*

14. Notice of this petition was directed to be issued to the respondent for 10.07.2017 and the petitioner was further directed to file an affidavit with regard to the authenticity of the track report, copy of which was attached with the petition. The service on the Corporate Debtor was effected and the appearance has been made by learned counsel on its behalf and there is a resolution of the Board of Directors of respondent-Corporate Debtor dated 23.07.2017 in favour of Shri Prabhat Kumar Srivastava, who has executed the power of attorney in favour of Mr. Vineet Tayal, Advocate.

15. The petitioner filed the affidavit of authorised signatory dated 06.07.2017 stating the compliance of order dated 03.07.2017 with which the summons of service of the notices dasti to the respondent on 04.07.2017 through the process serving agency of the Civil Court, postal receipt of despatch of notice by speed post on 04.07.2017 with the track report of the postal department showing the delivery of notice, were attached.

16. The respondent-Corporate Debtor has filed objections dated 12.07.2017 to the instant petition. It is admitted that the 'Equipments Hire Agreement' dated 26.05.2015 was executed, but the agreement was executed with the respondent described as Corporate Debtor and C&C a joint venture 'JV'. The first party in the agreement is named as "JV" with all rights and obligations therein being of the "JV". In the agreement, there was no individual reference to the liability of respondent only. It is stated that various invoices have also been raised against the "JV". Further the statutory demand notice has also been directed against the 'JV'.

*Prabhat*

Therefore, the instant petition against the respondent-Corporate Debtor alone is misconceived.

17. On merits, it is stated that it is not a case of an admitted liability or obligation from "JV" to the petitioner. The claim of the petitioner that the amount has been admitted in the reply dated 20.04.2017 to the demand notice dated 04.04.2017 is denied. It was specifically expressed in the reply that the petitioner has failed to submit the RA Bills/Invoices along with the documents especially the Log Sheets in original in terms of the work order and getting the same duly certified from the "JV". It is stated that there was no term in the work order/agreement that if no discrepancies are pointed out within seven days, the Bills shall be deemed to be verified. These bills/invoices were required to be verified by the "JV" in terms of the agreement. Further the specific liability for such an amount between the members of the "JV" would have to be ascertained in the appropriate proceedings. Para-wise reply to the other allegations in the application has also been given.

18. I have heard the learned counsel for the parties and perused the record quite extensively with their able assistance.

19. As per the mandatory requirement of Section 9 (3) (c) of the Code, the petitioner has also filed certificate from Financial Institution i.e. HDFC Bank, where the petitioner is maintaining its account. The certificate dated 01.06.2017 is Annexure P-18 at page 675 of the paper book. It is certified that there is no payment of ₹36,31,742/- credited in the account of the petitioner by the respondent during the period from 04.04.2017 till date. The demand notice in this case is dated 04.04.2017.

*Respectfully*

The petitioner has filed the copy of its statement of Bank Account in HDFC for the period from 01.05.2015 to 30.04.2017 (Annexure P-14), which reflects the last payment received from the respondent on 22.08.2016 to the tune of ₹1,20,062/- as also certified by the Director/Authorised signature of the petitioner. The petitioner has also attached the computation/calculation sheet in respect of the amount due as Annexure P-13.

20. Two questions basically arise in the instant case (i) Whether the petition under Section 9 of the Code is maintainable against the respondent alone? And (ii) Whether there is a dispute raised by the respondent disentitling the petitioner for an order of admission?

21. The basic document for raising the invoices is the work order/equipments hire agreement dated 26.05.2015 Annexure P-3. This agreement is executed between the petitioner and joint venture ("JV") comprising of ICI-C&C. The terms of the agreement are that ICI-C&C "JV" is engaged in the development and construction of NH-2 Project in the State of Bihar. All the other terms of contract refer to ICI-C&C "JV" as party of the first part.

22. The other conditions, inter-alia, are contained under different heads. Under the head bills submission/payment process the verification of the bills shall be undertaken by ICI-C&C "JV"; the bills to be submitted by the petitioner with original Log Sheets at the end of the calendar month. The 'JV' also undertook that the verified bills shall be paid within one month from the date of submission. It may be seen that so many invoices, except for the invoices dated 30.06.2015, 31.07.2015, 31.08.2015



and 31.10.2015 (four in number) at pages 116, 117, 118 and 122 respectively which are part of Annexure P-4 (Colly), are in the name of ICI & C&C 'JV'. The four invoices described above are in the name of the respondent alone.

23. Even the demand notice Annexure P-11 is addressed to the respondent as well as C&C, apart from many others. The provisions of the Code to trigger insolvency resolution process have to be construed strictly as per terms of agreement between the parties. It cannot be the choice of the petitioner to implead one of the two Corporate Debtors, who had entered into a joint venture agreement, for initiating the process under the Code. The petitioner having chosen to enter into the agreement with a joint venture comprising of two independent Corporate Bodies, who have a joint venture agreement between them, cannot select one of them. The learned counsel for the petitioner submitted that the registered office of C&C is in New Delhi, whereas that of the respondent is at Gurgaon in State of Haryana. Both these Corporate Debtors could not have been brought before the same forum of NCLT because of the jurisdictional issue. This argument though seems attractive would be untenable. In the fact situation of this case, the remedy to the petitioner may lie elsewhere. The aforesaid risk the petitioner has to face, in view of the nature of agreement, it has entered into.

24. Learned counsel for the petitioner, however, contended that there was an exchange of emails with the respondent alone and the amount under the work order is being paid from the account of the respondent and, so, this objection cannot be taken. It is further contended

*Gurgaon*

that there is even an acknowledgement of 'debt' in the emails sent by the respondent. Reference is made to Annexure P-9, the email sent by the respondent to the petitioner asking the petitioner to take out the print of the final settlement agreement format of which was Annexure P-9 (Colly), against the machinery hiring NH-2 Project and to sign and put the seal of the firm and to send it back with the discounted amount in the space provided.

25. It was also submitted that various emails, right from the commencement of the Equipment Hiring Agreement, it is only the respondent, which has been corresponding by email with the petitioner. These are the emails at Annexure P-5 (Colly) of various dates from 27.05.2015 onwards. I am of the view that the basic document should be the Equipment Hiring Agreement for the purposes of maintainability of the petition and the said agreement is entered into by 'JV'. Even the email dated 27.02.2017, with which the performa of final settlement agreement was attached was sent from email id of the representative of the respondent, but it was on behalf of ICI & C&C 'JV'.

26. As per sub-section (8) of Section 3 of the Code, a 'Corporate Debtor' means a Corporate Person, who owes a debt to any person. Sub-section (7) of Section 3 defines the term 'Corporate Person' and it reads as under:

*"corporate person" means a company as defined in clause (20) of section 2 of the Companies Act, 2013 (18 of 2013), a limited liability partnership, as defined in clause (n) of sub-section (1) of section 2 of the Limited Liability Partnership Act, 2008 (6 of 2009), or any other person incorporated with limited liability under any law for the time*



*being in force but shall not include any financial service provider."*

27. Under Section 2 (20) of the Companies Act, 2013, the term 'company' means a company incorporated under this Act or under any previous Company Law. It is not the version of the petitioner that ICI and C&C 'JV' is corporate person having its registered office in the State of Haryana, though it may have its corporate office at Gurugram. In view of the above discussion, the instant petition against the respondent alone would be not maintainable.

28. The next question is whether a dispute was raised by the respondent, disentitling the petitioner to an order of admission. Sub-section (5) of Section 9 of the Code reads as under:-

*"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 repayment 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 against any resolution professional proposed under sub-section (4), if any.*

*Ruprah*

- (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 repayment 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 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 application to rectify the defect in his application within seven days of the date of receipt of such notice from the Adjudicating Authority."*

29. The term dispute is defined in sub-section (6) of Section 5 of the Code, which reads as under:

- "(6) 'dispute' includes a suit or arbitration proceedings relating to-*
  - (a) the existence of the amount of debt;*
  - (b) the quality of goods or service; or*
  - (c) the breach of a representation or warranty."*

30. The present is not a case of an issue relating to the quality of goods or service or breach of representation or warranty. It centres round clause (a) of sub-section (6) of Section 5, as to whether the dispute is regarding the existence of the amount of 'operational debt'. The execution

*Dr. Rajan*

of Equipment Hiring Agreement between the petitioner and the joint venture is an admitted fact. The equipments having been supplied and the bills having been raised in accordance with the agreement is also admitted. In view of various clauses of sub-section 5 of Section 9 of the Code, all the requirements have been fulfilled by the petitioner except there being a dispute with regard to clause (d) of clauses (i) and (ii) of sub-section 5 of Section 9 of the Code, as to whether the notice of dispute has been received by the 'Operational Creditor' from the 'Corporate Debtor'. The fact that the petitioner is an 'operational creditor' is not in question.

31. Learned counsel for the petitioner vehemently contended that there is an admission by the respondent with regard to the amount of debt. The amount claimed is ₹36,31,742/-, the principal amount of 'debt' for which the respondent is stated to have committed default. The respondent sent its reconciled ledger account in respect of the petitioner with the email dated 30.01.2017 [at Annexure P-7 (Colly)]. In this ledger statement at page 310, the balance outstanding as on 30.01.2017, relating to the Bills/Invoices upto 30.10.2016 was admittedly ₹24,27,744/-. Regarding the bills for the months of October, November and December, 2016, the balance outstanding is shown as ₹11,86,500/-. With regard to the Bills for the months of October, November and December, it was recorded in the remarks column of the ledger statement that this amount can be more or less after ..... (some portion missing at this page) approved bill for posting. However, in the summary, it is stated that these three Bills were not received in the accounts Branch from the P & M Department (Personnel & Management Department). In the email Annexure P-7 dated 30.01.2017,

*Prasanna*

with which the ledger statement was annexed, the respondent stated that this is the reconciled ledger as on date, and requested the petitioner, if there was any need for assistance.

32. Thereafter, the email dated 27.02.2017 Annexure P-9 (Colly) at page 315, was sent by the office of the respondent on behalf of the "JV" attaching the final settlement agreement against the machinery hired for NH-2 Project. The petitioner was requested to take a print out on the letter head with the signature and seal and to send it back to the respondent after mentioning discounted amount in the space provided. The proforma of acknowledgement of settlement sent on behalf of the "JV" is at page 316 of the paper book. In this proforma, the respondent mentioned the admitted amount of ₹24,27,744/- certified upto September, 2016. This contains a clause that as per the settlement between the petitioner and the "JV", the parties confirm that the total outstanding amount from "JV" towards the bill and final settlement of all the outstanding dues under the contract agreement shall be INR .....(blank space) (excluding bills) of October, November and December, 2016, which are pending for amendment certification at ICI ("Agreed Outstanding").

33. Learned counsel for the petitioner submitted that pursuant thereto, the petitioner sent the duly signed acknowledgement of settlement letter vide email dated 28.02.2017. The acknowledgement of settlement is Annexure P-10 at page 322 of the paper book, in the same format by stating the amount of ₹24,27,744/- plus interest @ 24% per annum for the delayed payment and the blank space was filled by mentioning the amount of ₹11,86,500/- which was the period excluded for the bills of the months of

*Deepak*

October, November and December, 2016 as ("agreed outstanding"). In the email dated 28.02.2017, the petitioner requested for the payment as soon as possible.

34. Learned counsel for the respondent submitted that on the basis of this acknowledgement of settlement, the default at best could be claimed for an amount of ₹24,27,744/-, but the petitioner has claimed the total amount of ₹36,31,742/-, though the bills of October, November and December, 2016 were yet to be certified/verified. Since the amount claimed has not been finalised, there is a dispute in respect of the amount disentitling the petitioner to an order of admission.

35. To support his contention, learned counsel for respondent refers to the terms of the work order Annexure P-3, under the head "Bill submission/Payment Process". The first requirement is that the bills are to be submitted by the petitioner with the original Log Sheets at the end of the calendar month. Learned counsel for the petitioner would refer to various bills/invoices suggesting that the petitioner attached only copies of the Log Sheets and not the originals. Reference is also made to clause (3), under the same heading that verification of the bill was to be undertaken by ICI & C&C "JV". It is further stipulated in clause (4) that verified bill shall be paid within a period of thirty days from the date of its submission.

36. I do not find any substance in these contentions raised on behalf of the respondent. In the reply dated 20.04.2017 Annexure P-12, the plea of the respondent was that the petitioner did not submit the relevant supporting documents along with the RA bills/invoices. Further that the bills/invoices are replete with discrepancies. It was also stated that original

*Original*

documents were not sent for getting the bills verified. There was no indication in the reply that due to non-furnishing of Log Sheets in original, the bills could not be verified. This defence has been for the first time taken in the objections filed by the respondent. Anyhow in so many bills/invoices from June, 2015 to 31.05.2016 from pages 116 to 136 suggest that copies of Log Sheets were being sent and there was admittedly no dispute about those bills which were passed. In any case, all these issues pale into insignificance, once the respondent itself sent the reconciled ledger mentioning the amount in the email sent on 27.02.2017. In fact the 'JV' sent a notice vide email dated 19.12.2016 to the petitioner (page 276), de-hiring the motor grader machine. The respondent has not filed any document after the email dated 27.02.2016, with the reconciled accounts, raising any requirement to the petitioner to fulfil for finalizing the bills. Rather the petitioner had been communicating upon respondent for payment by sending emails even after sending of the demand notice. Learned counsel for the respondent has not referred to any of its email, where the petitioner was asked to send the original Log Sheets or the document.

37. In "**Kirusa Software Pvt. Ltd. Vs. Mobilox Innovations Pvt. Ltd.**", Company Appeal (AT) (Insolvency) 6 of 2017, the Hon'ble National Company Law Appellate Tribunal held that mere raising a dispute for the sake of dispute, unrelated to clauses (a), (b) and (c) of sub-section (5) of Section 5, if not raised prior to application and not pending before any competent Court of Law or authority cannot be relied upon to hold that there is a dispute raised by the 'Corporate Debtor'. It was further held that a mere

*Dr. Anam*

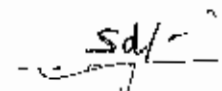
dispute giving a colour of genuine dispute or illusory, raised for the first time, while replying to the notice under Section 8 cannot be a tool to reject the application under Section 9 of the Code, if the 'Operational Creditor' otherwise satisfies the adjudicating authority that there is a debt and there is a default on the part of the Corporate Debtor.

38. In view of the above, this is a clear case of occurrence of a default of unpaid 'operational debt'.

39. It is, however, admitted that the rate of interest was not the term and condition in the work order itself, otherwise, the operational creditor is entitled to the interest even under the Interest Act. In any case, if the petition is to be admitted, the question of payment of interest and to what extent can be left for the committee of creditors on appointment of the resolution professional.

40. In view of the determination of point No.(i) against the petitioner, the instant petition is rejected.

41. Copy of this order be sent to both the parties.

  
**(Justice R.P. Nagrath)**  
**Member (Judicial)**  
**Adjudicating Authority**

Pronounced.  
 July 21, 2017.  
 Ashwani