

**IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH COURT III**

C.P. No. (IB) 734/MB/C-III/2024

*[Under Section 9 of the Insolvency and
Bankruptcy Code, 2016]*

In the matter of

Cross World Global Technology Limited

Through its authorized representative,

Mr. Vishal Pathak

8, Mekong Crescent Wuse-2, Abuja- Nigeria.

[CIN: TIN16461225-0001]

...Operational Creditor/Petitioner

Versus

All Cargo Logistics Limited

Avvashya House, CST Road, Santacruz,

Mumbai-400098.

[CIN: L63010MH2004PLC073508]

...Corporate Debtor/Respondent

Order pronounced on: 10.06.2026

Coram:

Ms. Lakshmi Gurung, Member (Judicial)

Shri Hariharan Neelakanta Iyer, Member (Technical)

Appearances:

For the Operational Creditor: Adv. Amir Arsiwala, Adv. Aishwarya Reddy, Adv.
Nancy Soni.

For the Corporate Debtor: Adv. Shyam Kapadia, Adv. Jamsheed Master, Adv.
Nirav B, Adv. Vahista Jagirdar i/b. Maneksha &
Sethna.

Per: Ms. Lakshmi Gurung, Member (Judicial)

1. The instant petition has been filed by Cross World Global Technology Limited (**'Petitioner'**/ **'Operational Creditor'**) to initiate Corporate Insolvency Resolution Process (**'CIRP'**) against All Cargo Logistics Limited (**'Respondent'**/ **'Corporate Debtor'**) under Section 9 of the Insolvency and Bankruptcy Code, 2016 (**'the Code'**) read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016.

2. **Brief Facts:**

2.1 The Operational Creditor is a company based in Abuja Nigeria and is engaged in the business of Power and Infrastructure development.

2.2 The Corporate Debtor is engaged in the business of transporting cargo across the globe with international supply chain solutions, providing Container Freight Station and Inland Container Depot facilities, optimizing supply chains.

2.3 The Corporate Debtor and the Operational Creditor had entered into a Logistic Service Agreement dated 01.06.2021 (**'Agreement'**), for the transportation of transformers and accessories from the Apapa, Lagos Port to DDP Transmission Stores Ojo, Lagos, Nigeria.

2.4 As per the Agreement dated 01.06.2021, the Operational Creditor was supposed to provide services in 3 lots:

- i. 1st lot consisting of 25x300 KVA+15X500 KVA+5X33 KV+5X60 MVA Transformer/ER from Apapa Port, Nigeria on FOB INCO terms till final delivery at Client site;
- ii. 2nd lot consisting of 5x60 MVA Transformer/ER from Apapa Port, Nigeria on FOB INCO terms till final delivery at Client site;

- iii. 3rd lot consisting of 5x165 MVA+ 10x100 MVA Transformer from Apapa Port, Nigeria on FOB INCO terms till final delivery at Client site.
- 2.5 The Operational Creditor's scope of work was to carry out vehicle arrangement at Apapa Port upon arrival of cargo for delivery of heavy pieces, custom clearance work at Apapa Port including arrangement of PAAR to pay VAT / import duty at Nigeria Port, safe unloading of cargo at site, de-stuffing of transformers and accessories.
- 2.6 As per the Agreement, Corporate Debtor was required to pay a total amount of USD 5,72,916.00 to the Operational Creditor. As per payment terms, Corporate Debtor was required to pay 50% of the advance amount while the balance amount was to be paid once the material is received at the site and proof of delivery is submitted.
3. **Submissions of the Operational Creditor**
- 3.1 It is submitted that, as per the payment terms given in the aforesaid Agreement, the Corporate Debtor made advance payment of USD 49,990.00 on 14.07.2021. Further, on 15.08.2021, the entire material was delivered by the Operational Creditor at the designated site therefore the Operational Creditor vide its email dated 02.09.2021, shared final invoices dated 02.09.2021, with Corporate Debtor for the balance amount payment.
- 3.2 On 12.09.2021, one Mr. Ashish Agarwal, General Manager of the Corporate Debtor confirmed the receipt of the aforementioned Invoices and stated that the same were forwarded to the relevant team for processing the payment in favour of the Operational Creditor.
- 3.4 As per part IV of the petition, outstanding Invoices are as under:

- I. Ref. No. CWGT/AC/210/001 dated 02.09.2021 for the amount of 1,44,097.94 USD.
 - II. Ref. No. CWGT/AC/210/002 dated 02.09.2021 for the amount of 62,887 USD.
 - III. Ref No. PI/CWGT/AC/210/007 dated 02.09.2021 for the amount of 1,58,948 USD.
 - IV. Total= USD 3,65,932.94, i.e., Rs. 3,05,62,719.15 (Rate as on 12.07.2024 - 1 USD = Rs. 83.52 INR)
- 3.5 The Operational Creditor sent multiple reminders calling upon the Corporate Debtor to make the afore-mentioned payments. Despite sending several reminders, the Corporate Debtor failed to make any payments towards outstanding amount.
- 3.6 The Operational Creditor on 25.08.2023 sent a Demand Notice to the Corporate Debtor, inter alia, calling upon the Corporate Debtor to pay the outstanding amount of USD 3,65,932.94/-.
- 3.7 It is submitted that the debt fell due on the 02.09.2021, as all the materials were delivered by the Operational Creditor on the 15.08.2021 and the invoices were issued on 02.09.2021 and 12.10.2021, respectively which were acknowledged by the Corporate Debtor.

4. **Reply by the Corporate Debtor:**

- 4.1 The present Petition deserves to be dismissed on the following grounds:
 - i. The Petitioner has suppressed the fact that there are payments of USD 429,229.55 which have been made by the Respondent, therefore, USD 34,026 are receivable from the Petitioner.

- ii. On a bare perusal of the Petition, it is noted that the Petitioner has updated the National e-Governance Services Financial Information Record to suggest that the date of default is 15.08.2021, however, the invoices on the basis of which payment is sought are dated in the period 02.09.2021 to 12.08.2021.
- iii. The Demand Notice dated 25.08.2023 is not served upon the Respondent and no proof of service is attached.
- iv. The invoice No. PI/CWGT/AC/210/007 dated 12.10.2021, has not been served upon the Respondent and there is no valid, subsisting, binding debt between the parties as on the date of the alleged Notice or Petition.
- v. The Petitioner has nowhere explained as to why the Petition is filed more than one year after the alleged Demand Notice has been raised.
- vi. The Respondent is a Public Limited Company and is required to report its transfer of business on the portal of the Stock Exchange, therefore, the Petitioner is aware that the liability of this business is no longer with the Respondent Company, but with J.M. Baxi Heavy Pvt. Ltd. therefore, in any event, the said debt if any is liable to be received from J.M. Baxi Heavy Pvt. Ltd. Further, excess payment was made the Petitioner which is to be settled between the Petitioner and J.M. Baxi Heavy Pvt. Ltd.
- vii. The Petitioner has not placed on record any acceptance of debt or proof of confirmation of an outstanding amount, therefore, it is reiterated that the Respondent received knowledge of Invoice No. PI/CWGT/AC/210/007 only by way of the present Petition.
- viii. The total value of debt is USD 3,65,932.94 pertains to three purported invoices bearing reference Nos. CWGT/AC/210/001,

CWGT/AC/210/002 and PI/CWGT/AC/210/007. The invoices dated 02.09.2021 for an amount of USD 62,887 and USD 144,097.94 have been already paid to the Petitioner. Invoice No. PI/CWGT/AC/210/007 is not payable and it appears to be a consolidated invoice for Phase 1 and Phase 2 shipments which is already covered in the paid invoices bearing nos. CWGT/AC/210/001, CWGT/AC/210/002.

5. Rejoinder on behalf of the Applicant: -

- 5.1 The Petitioner has duly served the Demand Notice in Form 3 and Form 4 to the Corporate Debtor. The Demand Notice was duly dispatched to the Corporate Debtor on 28.08.2023, to its registered address, *All Cargo, A. Vyashya House, CST Road, Santacruz East, Mumbai - 400098*, through DHL Courier Services and was delivered to the Corporate Debtor on 31.08.2023 at 3:51 PM.
- 5.2 Invoices dated 02.09.2021, bearing reference numbers CWGT/AC/210/001 and CWGT/AC/210/002, for the amounts of USD 62,887 and USD 144,097.94, remain unpaid since 2021. Only partial advance amounts have been received till date.
- 5.3 Invoice dated 12.10.2021, bearing reference number PI/CWGT/AC/210/007, is not a consolidated invoice for Phase 1 and Phase 2 shipments. Rather, it is a distinct invoice raised for the additional expenses incurred in connection with Phase 1 and Phase 2 shipments, amounting to USD 158,948.
- 5.4 The assertions made by the Corporate Debtor regarding the alleged settlement of the outstanding dues and the purported transfer of liability to one J.M. Baxi Heavy Pvt. Ltd is misleading. The Ledger Account maintained by the Petitioner clearly reflects an outstanding balance of USD 365,932.94 due from the Corporate Debtor as on 26.06.2024.

- 5.6 It is submitted that the aforementioned invoices were shared with the Corporate Debtor vide email on 02.09.2021 which were expressly acknowledged by Mr. Ashish Agarwal, General Manager of the Corporate Debtor. Further Invoice No. PI/CWGT/AC/210/007 was shared with the Corporate Debtor via WhatsApp and was also enclosed with the Demand Notice.
- 5.7 It is further submitted that all obligations arose under a direct contractual relationship and there has been no novation, assignment, or any other form of transfer of liability to J.M. Baxi Heavy Pvt. Ltd., nor has any such arrangement been agreed to or accepted by the Petitioner.
- 5.8 The Corporate Debtor has never raised any objection regarding its liability or any alleged business transfer at the time when the Demand Notice was served.
- 5.9 As per the payment terms stipulated in the agreement, the balance amount was to be paid upon receipt of the material at the designated site. It is stated that the material was duly received at the designated site on 15.08.2021. Accordingly, the date of default is 15.08.2021, and the same has been recorded on the NeSL portal.

DISCUSSIONS & FINDINGS

6. Heard the Counsels for the parties and perused the record.
7. The facts have already been narrated in para 2. We propose to deal with the rival submissions of the parties.
8. The Operational Creditor has submitted that: -
- i. Invoices dated 02.09.2021, bearing reference numbers CWGT/AC/210/001 and CWGT/AC/210/002, for the amounts of

USD 62,887 and USD 144,097.94, remain unpaid since 2021. Partial Advance payments have been received.

- ii. Invoice dated 12.10.2021, bearing reference number PI/CWGT/AC/210/007, is a distinct invoice raised for the additional expenses incurred by the Petitioner in connection with Phase 1 and Phase 2 shipments and was issued to the Respondent via WhatsApp.
 - iii. The Correspondences placed on record nowhere indicate a dispute regarding the quality of service, terms of contract, or quantum prior to issue of statutory demand notice.
 - iv. Part payments, Advance payments made do not extinguish the liability of the Corporate Debtor to pay the remaining debt.
 - v. The Demand Notice 25.08.2023 has been sent in Form 3 and Form 4 to the Corporate Debtor.
 - vi. The goods and material were delivered at the designated site on 15.08.2021. Accordingly, the date of default is 15.08.2021, and the same has been recorded on the NeSL portal.
 - vii. There has been no novation, assignment, or any other form of transfer of liability to J.M. Baxi Heavy Pvt. Ltd
9. The Operational Creditor contends that there is no pre-existing dispute between the parties, outstanding operational debt continues to subsist as long as the balance due remains unpaid and that partial payments do not constitute dispute has relied on the following case laws:

*i. Mobilox Innovative Pvt Ltd vs Kirusa Software Pvt Ltd 2018
1 SCC 353.*

- ii. Romi Datta vs Sigma Supply Chain Solutions Pvt.Ltd (2021 SCC Online NCLAT 1342).*
- iii. Indiacrete Ready Mix Pvt Ltd vs Theme Developers Pvt Ltd (2025 SCC Online NCLT 4193).*
- iv. Pedersen Consultants India Pvt Ltd vs. Nitesh Estates Limited (2019 SCC Online NCLAT 422):*

10. The Corporate Debtor has objected the maintainability of the Petition on the following grounds:


- i. The Petitioner has suppressed that payments of USD 429,229.55/- were made by the Corporate debtor.
- ii. Invoices No. CWGT/AC/210/001 for an amount of USD 62,887, CWGT/AC/210/002 USD 144,097.94 have already been paid. Invoice No. PI/CWGT/AC/210/007 has not been received by the Respondent.
- iii. As per the National e-Governance Services Financial Information Record annexed to the petition that the date of default is 15.08.2021, however, the invoices for which payments are sought are for the period 02.09.2021 to 12.08.2021.
- iv. Demand Notice dated 25.08.2023 is not served upon the Respondent. The Petitioner in its Affidavit in Rejoinder has provided alleged tracking report which is not even legible and/or does not show delivery of the Demand Notice on the Respondent.

v. The business in connection with the present transaction has been transferred by the Respondent to one J.M. Baxi Heavy Pvt. Ltd and consequently all liabilities arising therefrom are liable to be borne by the said J.M. Baxi Heavy Pvt. Ltd.,

11. Considering the contentions made by the parties, the issue that arises for consideration is:

i. Whether there is any dispute with reference to the Invoices?

12. We note that a Demand Notice dated 25.08.2023 was sent by the Operational Creditor to the Corporate Debtor. The Operational Creditor to support the fact that Demand Notice was delivered to the Corporate Debtor has annexed delivery report as *Annexure 1* to the Petition. The delivery receipt is reproduced herein under:


Shipment Receipt PGS v4.4 

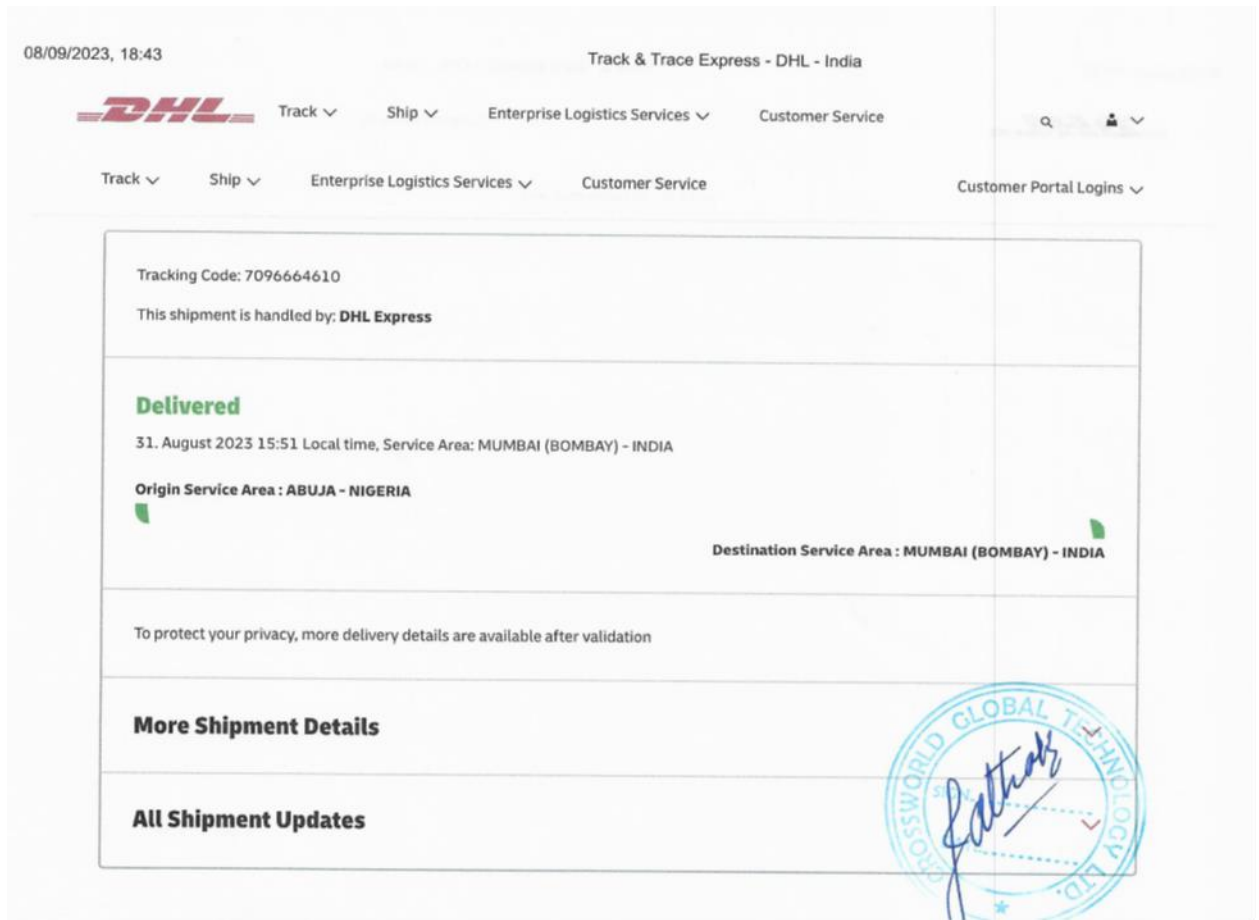
Shipment From CROSSWORLD GLOBAL TECHNOLOGY LTD VISHAL PATHAK NO. 8 MEROUJ STREET MOSE 11 ABUJA ABUJA NIGERIA +2347061322771 -	Shipment To ALL CARGO ASHISH AGARWAL A. VVASHYA HOUSE, CST ROAD SANTACRUZ EAST MUMBAI 400098-MUMBAI 27 MAHARASHTRA INDIA +919930319370 -
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Shipment Details Shipment Date : 28/08/2023 Waybill Number : 7096664610 Service Type : EXPRESS EASY - DOCUMENT Packaging Type : XPD; Number of Pieces : 1 Total Weight : 0.5 KG Dimensional Weight : 0.36 KG Chargeable Weight : 0.5 KG Insured Amount : NO	Reference Information Reference : SPANG4	Description of Contents DOCUMENTS
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Billing Information Payment Type : SHIPPER Billed To (Account) : Expiration Date : N/A	International Information Declared Value : 0.00 Destination Duties and Taxes: PAID BY RECEIVER Delivery Duty Paid : NO Estimated Delivery Date : MON, 4 SEP 2023, BY END OF DAY	Special Services DOCUMENTS
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Charges Information NGN			
Amount	Tax	Total	





13. It is pertinent to note that the Demand notice dated 25.08.2023 clearly mentioned that if the Corporate Debtor disputed the existence of debt then same shall be done within 10 days of receipt of notice. The relevant extracts of demand Notice are reproduced herein under:

*3. If you dispute the existence or amount of unpaid operational debt (in default) please provide the undersigned, **within ten days of the receipt of this letter**, of the pendency of the suit or arbitration proceedings in relation to such dispute filed before the receipt of this letter/notice.*

14. We note that the Corporate Debtor has not given any reply to the demand Notice 25.08.2023.

15. It would also be appropriate to refer to other correspondences exchanged between the parties. We note that the Petitioner sent an email dated 02.09.2021 to the Corporate Debtor stating as follows:

*“Dear Ashish,
Pls find our final invoice attached for shipment 1 and 2 Transformers. Kindly assist with processing our payment. Delivery note I am sending you via WhatsApp”.*

16. We note that the Respondent in response to email dated 02.09.2021 sent an email dated 12.09.2021 to the Petitioner stating as follows:

*“Dear Vishal ji,
Have made some corrections in the Invoices (Company Name Correction) and **submitted the Invoices with our Final team. Please make a record at your End for your reference.** Confirm if there are any changes.
Thanks in advance.”*

(Emphasis Provided)

17. From perusal of the above emails we note that only two invoices were attached to the email by the Operational Creditor bearing Invoice No. CWGT/AC/210/001 and CWGT/AC/210/002. It is also pertinent to note that no other correspondences have been placed on record by the parties.
18. Further, it is pertinent to note that in the Service Agreement dated 01.06.2021, clearly stated that once all goods are delivered, the Corporate Debtor shall be liable to make payment to the Operational Creditor. The relevant extract of the Service Agreement is reproduced herein under:

<i>Payment Terms</i>	<ul style="list-style-type: none"> - Advance 50% with order against, - Balance after the Material is received at TnR's Client site and Duly Stamped & Signed POD's are submitted.
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19. The Petitioner has contended that despite delivering the goods at the designated site, the Corporate Debtor has failed to pay entire amount for Invoices bearing No. CWGT/AC/210/001, CWGT/AC/210/002 PI/CWGT/AC/210/007 and has annexed a copy of the Ledger Account of the Corporate Debtor in the Books of Accounts of the Operational Creditor as on 26.06.2024 as *Annexure 8* to the Petition. The Ledger Account is reproduced as under:

Date	Particulars	Amount	Balance	Balance USD
		Dr	Cr	
	Opening Balance			0.00
17.06.2021	Invoice No 1 for Phase 1 shipment of 45 no's Earthing Transformer (Adv)	144,097.94		144,097.94
14.07.2021	Received UBA A/c. No. 3001698634		49,990.00	94,107.94
22.07.2021	Invoice No 1 for Phase 1 shipment of 45 No's Earthing Transformer (Adv)	62,887.00		156,994.94
24.07.2021	Invoice No.2 for Phase 2 shipment of 10 No's 60 MVA	86,000.00		242,994.94

	Transformer for crane hiring			
29.07.2021	Invoice No.3 for Phase 2 shipment of 10 No's 60 MVA Transformer against the liner cost at Apapa port	28,861.00		271,855.94
29.07.2021	Invoice No.3 for Phase 2 shipment of 10 No's 60 MVA Transformer against the liner cost at Apapa port	24,332.23		
30.07.2021	Received UBA A/c No.3001698634		94,087.94	202,100.23
03.08.2021	Received UBA A/c No.3001698634		148,877.00	
10.08.2021	Received UBA A/c No.3001698634		24,322.23	
02.09.2021	Invoice No.1 for Phase 1 shipment of 45 no's Earthing Transformers	144,097.94		
02.09.2021	Invoice No. 2 for Phase 2 shipment of 10 no's 60 MVA Transformer (Final)	62,887.00		
29.07.2021	Invoice for Stevedoring	49,025.38		

	Demurrageport Handling CHGS			
10.09.2021	Received UBA A/c. No. 3001698634		49,025.38	235,885.94
11.10.2021	Received UBA A/c. No. 3001698635		62,887.00	172,998.94
12.10.2021	Invoice No.7 for Phase 1 and 2 shipment 45 nos of earthing and 10 no's 60 MVA Transformer	158,948.00		331,946.94
	Adjustment of Bank Charges	33,986.00		365,932.94
	Total	761,136.49	429,189.55	365,932.94

20. It is evident from the ledger that against the Invoice No. CWGT/AC/210/001 raised for an amount of Rs.1,44,097.94 the Operational Creditor has received advance payment of USD 49,990 on 14.07.2021 and has received a payment of USD 94087.94 on 30.07.2021.
21. We also note that against the Invoice No. CWGT/AC/210/002 the Operational Creditor has received advance payment of USD 62,887 on 11.10.2021.
22. Moreover, the Corporate Debtor in its reply has also submitted that both the Invoices No. CWGT/AC/210/001, CWGT/AC/210/002 have been duly paid and in support has annexed Copy of working demonstrating the Invoices received and payments made as **Annexure A** to its Reply. The said table is reproduced herein under:

C.P. No. (IB) 734/MB/C-III/2024

Invoice No. of the Vendor	Bill Date	Bill Booking	Investment Amount in USD	Exchange Rate	Amount in INR	Matching
CWGT/AC/210/002	02.09.2021	20.09.2021	62,887.00	74.83	4,680,679.41	1
CWGT/AC/210/001	02.09.2021	20.09.2021	144,097.94	74.83	10,782,848.85	2
CWGT/AC/210/006	02.09.2021	20.09.2021	28,861.00	74.00	2,135,714.00	
CWGT/AC/210/005	02.09.2021	20.09.2021	49,025.38	74.19	3,637,164.75	3
CWGT/AC/210/004	02.09.2021	20.09.2021	24,332.23	74.25	1,806,668.07	4
CWGT/AC/210/003	02.09.2021	20.09.2021	86,000.00	72.89	6,268,540.00	
Total Invoice Booked (A)			395,2023.55		29,311,615.08	
UTR Refn No	Payment Date	Inv Amt in USD	Exchange Rate	Amount in INR	Text used in ledger	
560FT01211950025	14-07-2021	50,000.00	74.80	3,739,875.00	Crossword Global USD 50,000.00	2
560FT01212100063	29.07.2021	94,097.94	74.44	7,004,650.65	Crossword Global USD 94,097.94	2
560FT01212140027	02.08.2021	148,887.00	74.50	11,091,709.28	Crossword Global USD 148,887.00	
560FT01212210033	09.08.2021	24,332.23	74.35	1,809,101.30	Crossword Global USD 24,332.23	4
560FT0121250027	09.09.2021	49,025.38	73.71	3,613,660.76	Crossword Global USD 49,025.38	3
560FT01212810077	08.10.2021	62,887.00	75.18	4,727,844.66		1
Total Payments done (B)		429,229.55		1,986,841.65		
Exchange loss				83,095.91	EXCHANGE LOSS	
Total Exchange Gain/Loss Booked				83,095.91		
Balance Receivable (A-B-C)		34,026.00		- 2,592,130.66		

Against the total 6 bills amt of USD 3,95,203.55, we have made payment of USD 4,29,229.55 from time to time. Though Excess of USD 34,026.00. This receivable amt of Rs. 25.92 lacs were trfd to JM Baxi on 31.12.21, at time of Deal. As such, vendor balance is made NIL on 31.12.2021 in the books. In case, if there are any bills, over and above 6, then those need to be shared to be checked. Persons who have booked this bill and made the payments – all have gone to JM Baxi.

23. In the legal notice dated 08.04.2023 issued on behalf of the Operational Creditor to Corporate Debtor, it is stated that the Operational Creditor sent final invoices dated 02.09.2021 for the balance payment and provided the details of said invoices as per following details:

S.N.	Description	Qty	Amount in USD
1.	Invoice No.1 for phase 1 shipment of 45 no's Earthing Transformer (Ref No, CWGTIAC/210/001)	45	144,097.94
2.	Invoice No.1 for phase 2 shipment of 10 no's 60 MVA Transformer (Ref No. CWGT/AC/210/002)	10	62,887.00
3.	Invoice No.3 for phase 2 shipment of 10 no's 60 MVA Transformer for crane hiring. (Ref No.CWGT/AC/210/003)	2	86,000.00

4.	Invoice No.4 for phase 2 shipment of 10 no's 60 MVA Transformer against the liner coast at Apapa Port. (Ref No, CWGT/AC/210/004)	10	24,332.23
5.	Invoice No.5 for phase 2 shipment of 10 no's 60 MVA Transformer against the additional crane operational coast at Apapa Port. (Ref No. CWGT/AC/210/005)	1	49,025.38
6.	Invoice No.6 for phase 2 shipment of 10 no's 60 MVA Transformer against the, liner coast at Apapa Port. (Ref No. CWGT/AC/210/006)	10	28,861.00
7.	Invoice No.2 for phase 1 shipment of 45 no's Earthing Transformer. (Ref No. CWGT/AC/210/007)	45	144,097.94
8.	Invoice No.2 for phase 2 shipment of 10 no's 60 MVA Transformer. (Ref No. CWGT/AC/210/008)	10	62,887.00
Total Amount			602,188.49

24. However, in the copy of the Ledger Account of the Corporate Debtor in the Books of Accounts of the Operational Creditor as on 26.06.2024 (annexed as *Annexure 8 at page No. 39* of the petition), the total of all invoices sums up to USD 761,136.49 instead of 602,188.49. The reason for difference is the invoice No. PI/CWGT/AC/210/007 dated 12.10.2021

for Phase 1 & 2 shipment of 45 Nos. of earthing and 10 nos. 60 MVA Transformer for USD 158,948.00. The Corporate Debtor has denied the receipt of and genuineness of the said Invoice No. PI/CWGT/AC/210/007 for USD 158,948.00. It is noticed that in the legal notice dated 08.04.2023, Invoice No. PI/CWGT/AC/210/007 dated 12.10.2021 for USD 158,948.00 was not included in the outstanding dues.

25. It is also noticed that the total lumpsum amount under the Agreement dated 01.06.2021 payable by the Corporate Debtor to the Operational Creditor is USD 572,916.00. Then how invoices aggregating to USD 761,136.49 have been raised by the Operational Creditor without explaining any increase in the scope of work.
26. It is further noticed that the Operational Creditor has already received part payments for the services under the Agreement dated 01.06.2021. The Operational Creditor had raised Invoice No. CWGT/AC/210/001 dated 17.06.2021 for USD 144,097.94 for shipment of 45 no's Earthing Transformer (Adv) and Invoice No. 2 dated 22.07.2021 for USD 62,887 for shipment of 45 No's Earthing Transformer (Adv), against which the Corporate Debtor has made payments which are admitted by the Operational Creditor in its books of ledger account. The Petitioner submitted that the Final Invoices are raised by the Operational Creditor for the balance amount. However, first two invoices mention (Adv) indicating Invoice for Advance payment. In the final invoice it is mentioned we "*we would like to submit the Performa Invoice consultancy services provide by us.*" Though the heading of the Invoice states Final Invoice but the particulars in the invoice point to Performa Invoice.
27. Further, as per the general commercial parlance, an invoice is raised for the gross amount of the services rendered and if any advance is received from the customer, the same is deducted from the gross amount and the net receivable amount has to be clearly reflected. However, none of the

final invoices raised by the Operational Creditor reflects the advance payments and net due payable. There are too many anomalies in version of the Operational Creditor.

28. Further, the emails sent by the Operational Creditor to Corporate Debtor after receipt of the material contains only 2 final bills being Invoice No. CWGT/AC/210/001 for USD 144,097.94 and Invoice No. CWGT/AC/210/002 for USD 62,887. The email is absolutely silent about Invoice No. PI/CWGT/AC/210/007 for USD 158,948. Even upon repeated queries during oral hearing of the matter, this Tribunal sought any evidence to show that the said invoice dated 12.10.2021 for USD 158,948/- was served upon the Corporate Debtor, it was answered that the same was submitted to Corporate Debtor via WhatsApp. The Petitioner has not annexed any evidence or proof supporting the fact that Invoice No. PI/CWGT/AC/210/007 was sent to the Corporate Debtor via WhatsApp. There is no screenshot or any other evidence on record to substantiate that the said disputed invoice was ever served upon the Corporate Debtor. When other invoices were issued to the Petitioner vide email, we find no reason as to why Invoice No. PI/CWGT/AC/210/007 was not communicated to the Corporate Debtor vide email if the same was a genuine Invoice. Moreover, when we look at the particulars/description in the Invoices, then Invoice No. PI/CWGT/AC/210/007 appears to be a consolidated Invoice of Invoice No. CWGT/AC/210/001 and Invoice No. CWGT/AC/210/002.
29. Therefore, the dispute relating to said invoice No. PI/CWGT/AC/210/007 for USD 158,948.00 is clearly made out by the Corporate Debtor. The reconciliation statement submitted by the Corporate Debtor explains the transactions that advance payments were made and upon receipt of the invoices, balance payments were made except those payments which appear to be repeated for the same services.

30. Further, as per Part V of Form 5, the Operational Creditor has stated that Record of Default is annexed as Annexure -13. The Index also states that the Record of Default with information Utility is annexed as Annexure – 13. However, perusal of Annexure 13 reveals that Annexure 13 is merely Record of Financial Information in Form C which is the information provided to Information Utility by the Operational Creditor as on 10.01.2024. Thereafter, upon being satisfied about the debt and default, the Information Utility issues Form D, which is the Record of Default. Form D has not been placed on record. Therefore, we can infer that NeSL has not issued the Record of Default and there is no evidence of record of default with Information Utility.
31. Considering all the aspects of the case, we hold that Corporate Debtor has been able to demonstrate the dispute in the invoice amount and genuineness of the final bills.
32. In the Case of **Brandy Realty Services Ltd. v. Sir John Bakeries India (P) Ltd., 2022 SCC Online NCLAT 290**, Hon'ble NCLAT held that the fact that Reply to notice under Section 8(1) having not been given within 10 days or no reply to demand notice has been filed by the Corporate Debtor does not preclude the Corporate Debtor to bring relevant materials before the Adjudicating Authority to establish that there is dispute which may lead to the rejection of Section 9 application. The relevant extract of the judgement is reproduced herein under:

12. One of the questions to be considered in the present case is as to; when Reply submitted by Corporate Debtor was not within 10 days from the receipt of the notice under Section 8, whether the Corporate Debtor is precluded to raise the issue of Pre-Existing Dispute before the Adjudicating Authority xxxxx

Xxx

We thus are of the considered opinion that mere fact that Reply to notice under Section 8 (1) having not been given within 10 days or no reply to demand notice having been filed by the Corporate Debtor does not preclude the Corporate Debtor to bring relevant materials before the Adjudicating Authority to establish that there are pre-existing dispute which may lead to the rejection of Section 9 application. In the above context, we may refer to Judgement of this Tribunal in “Neeraj Jain Vs. Cloudwalker Streaming Technologies Private Limited” (Company Appeal (AT) Ins. No. 1354 of 2019) decided on 24th February, 2020 in paragraph 50 following observations have been made by this Tribunal:

“...Even otherwise, mere failure to reply to the demand notice does not extinguish the rights of the Operational Creditor to show the existence of a pre-existing dispute...”

33. Moreover, In the judgment of the Hon’ble Supreme Court in the **Mobilox Innovations Private Limited v. Kirusa Software Private Limited [2018 (1) SCC 353]** it was held as follows:

*“40. 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.***

(Emphasis Provided)

34. Accordingly, in light of the discussion on disputed invoices this Tribunal is of earnest view that the Corporate Debtor has been successful in disputing the debt and default and such dispute is not spurious or hypothetical which *prima facie* renders the petition as non-maintainable as held in **Mobilox Innovations Private Limited v. Kirusa Software (supra)**.
35. In result, the Company Petition 734 of 2024 is **dismissed**.

SD/-

Hariharan Neelakanta Iyer
Member (Technical)

/LRA Apurva/

SD/-

Lakshmi Gurung
Member (Judicial)