NATIONAL COMPANY LAW APPELLATE TRIBUNAL, PRINCIPAL BENCH, NEW DELHI

Company Appeal (AT) (Insolvency) No. 209 of 2025

(Arising out of Order dated 03.12.2024 passed by the Adjudicating Authority (National Company Law Tribunal), Court V, New Delhi in CP IB No. 629/(ND)/2021)

IN THE MATTER OF:

Ingram Micro India Private Limited
Having its registered office at
5th Floor, Empire Plaza, Building A,
LBS Marg, Vikhroli West,
Mumbai, Maharashtra - 400083
E-Mail: newdelhi@iijllp.com **.... Appellant**

Vs

Bathla Teletech Private Limited
Having its registered office at:
258, Gujrawala Town,
Part III, New Dclhi-110009
E-Mail: bathlateletech.delhi@gmail.com **... Respondent**

Present:

For Appellant:	**Mr. Krishnendu Dutta, Sr. Advocate with Mr. Sudhir Kumar, Mr. Anand Shankar Jha, Mr. Sumeet Vankadkar, Ms. Niharika Sharma, Mr. Siddharth Kumar and Mr. Abhilekh Tiwari, Advocates.**
For Respondent:	**Mr. Bhavya Sethi, Mr. Manish Gupta, Ms. Apurva A. and Mr. Karthik KR, Advocates.**

J U D G M E N T

ASHOK BHUSHAN, J.

This appeal has been filed by the Appellant challenging the order dated 03.12.2024 passed by the Adjudicating Authority (National Company Law Tribunal), Court V, New Delhi rejecting Section 9 application CP IB No.

629/(ND)/2021 filed by the Appellant against the Respondent herein. Aggrieved by the order rejecting Section 9 application, this appeal has been filed. Brief background facts necessary to be noticed for deciding this appeal are:

(i) The Appellant is in business of distribution of IT and electronic products and is authorised distributor of various IT companies including Apple. The Respondent is reseller of electronic products to customers procured from various distributors including Appellant.

(ii) Appellant supplied various electronic goods of various manufacturers including Apple to the Respondent subject to terms and conditions as agreed between the parties. Respondent used to issue balance confirmation from time to time.

(iii) On 30.09.2020, the Respondent issued a stamped balance confirmation informing the balance payable by Respondent to the Appellant as on 30.09.2020.

(iv) Standard Sales Terms and Conditions of Ingram were accepted by Respondent on 25.02.2021, in pursuance to which Appellant supplied various electronic goods including iPhone 11, iPhone 12 as well as iPad by invoices dated 03.03.2021 to 16.03.2021, totalling to an amount of Rs.7.33 Crores. Supplies were duly accepted by the Respondent. Each invoice contained payment term of 21 to 30 days.

(v) On 11.05.2021, Appellant sent an email to the Respondent informing overdue amount of Rs. 7,32,89,324/-. Respondent was requested to arrange to provide overdue amount on most urgent basis. The said

email was replied by the Respondent on 13.05.2021. Respondent commented that intention to clear all payables is one of fundamentals of the Respondent. After email dated 13.05.2021, on 15.05.2021, Appellant again sent an email requesting the Respondent to share payment plan of Rs.7.33 Crores. The email dated 15.05.2021 was replied by the Respondent informing that Respondent shall share a more specific plan once lockdown opens. Respondent also requested the Appellant to withdraw the BG invocation notice.

(vi) On 19.05.2021, the Appellant invoked bank guarantees and realized Rs.2 Crore.

(vii) On 21.05.2025, the Appellant raised a Debit Note for Rs.7,71,365/- upon Respondent on account of accrued interest on unpaid invoices having due date 11.06.2021. Respondent handed over two post-dated cheques dated 24.05.2021 totalling to Rs.5,39,20,029/-. Cheques were deposited by the Appellant in its account in HDFC Bank. On 28.05.2021, the cheques were returned unpaid with reason "Payment Stopped by Drawer".

(viii) After dishonour of cheques, a legal notice dated 02.06.2021 was given by the Appellant to the Respondent, calling upon the Respondent to make payment of Rs.5,39,20,029/- within 15 days. Notice was under Section 138 of the Negotiable Instruments Act, 1881 for dishonour of cheques. Notice dated 02.06.2021 was replied by the Respondent on 21.06.2021 pleading that various Apple

products purchased by the Respondent from distributers of Apple including Appellant i.e. iPhone 8 in the year 2018 has not yet taken back. Respondent has huge lot of unsold Apple products which Respondent was entitle to return to Apple and settle all claims. Respondent is also entitled for backend discount which was receivable through Apple authorized distributors. In the reply notice, Respondent claimed that they are entitle to receive an amount of Rs.7,05,36,162/-.

(ix) The said notice dated 21.06.2021 was replied by the Appellant on 14.07.2021 alleging that said reply has been send with ill intention and tainted with malice. The claim was refuted and it was stated that as per Appellant Reseller Agreement any disposition of the product is to be dealt by the Apple and with respect to the backend discount, the Appellant is not obliged to discharge.

(x) On 07.08.2021, Appellant issued demand notice under Section 8 of the I&B Code claiming total amount of debt of Rs.5,70,79,189.27/- including Principal Amount of Rs.5,39,20,029/- with interest of Rs.31,59,159/- as on 11.06.2021. The demand notice was served but no reply to demand notice was received from the Respondent.

(xi) An application under Section 9 was filed by the Appellant on 24.09.2021 against the Respondent claiming an amount of Rs.5,70,79,189.27/- relating to invoices issued between 03.03.2021 to 16.03.2021. 11.06.2021 was claimed as date on which amount

fell due. In Section 9 proceeding, reply was filed by the Respondent on 06.04.2022.

(xii) On 08.03.2022, a notice was issued by the Respondent to Apple India Pvt. Ltd. and the Appellant for invocation of arbitration. Notice dated 08.03.2022 for invocation of arbitration was replied by the Appellant refuting the notice and contending that Appellant not being party to the Agreement signed between Respondent and Apple India Pvt. Ltd., Respondent was asked to withdraw the name of the Appellant.

(xiii) The Respondent had filed a proceeding in Delhi High Court under the Arbitration and Conciliation Act, 2006 being OMP (I) Comm. 124/2022 where the High Court appointed a Local Commissioner. The Local Commissioner has conducted inspection on premises of Respondent and submitted a report on 21.06.2022.

(xiv) An application under Section 11 of the Arbitration and Conciliation Act was filed by the Respondent before Delhi High Court for appointment of Arbitrator in which application the Appellant was also impleaded as 2nd Respondent. Appellant raised objection before Delhi High Court that Appellant being not party to the Arbitration Agreement, he should be deleted from the proceeding. The Delhi High Court by order dated 21.01.2023, appointed an Arbitrator for adjudication in the dispute between Respondent and Apple India Pvt. Ltd. The name of the Appellant was deleted from the said arbitration proceeding.

(xv) The Respondent filed an IA before the NCLT being I.A. No.4884 of 2022 to bring on record the report of the Local Commissioner dated 21.06.2022 appointed by Delhi High Court. The Adjudicating Authority vide order dated 03.03.2023 rejected I.A. No.4884 of 2022 and refused to take report of Local Commissioner on record. The Respondent withdrew the application and the application for withdrawal was allowed.

(xvi) On 10.11.2023, the NCLT allowed the Respondent to place on record two additional documents arising out of arbitration proceeding between Respondent and Apple.

(xvii) Both the parties filed written submissions before the Adjudicating Authority. The Adjudicating Authority vide impugned order has rejected the Section 9 application.

(xviii) The Adjudicating Authority held that there were pre-existing dispute between the parties. For coming to which decision the Adjudicating Authority made following observations in Para 12, 13 and 14:

> *"12. ……… In this regard, it is observed that the dispute raised by the Corporate Debtor with regard to the withholding of the 'backend discount', which is also the subject matter of adjudication in the instant application, has already been raised by the Corporate Debtor in its reply dated 21.06.2021 to the Section 138 of the Negotiable Instruments Act, 1881 i.e. before the issuance of the Demand Notice dated 07.08.2021.*
>
> *13. Secondly, the Corporate Debtor also disputes the 'quality of goods' sent by the Operational Creditor to*

the Corporate Debtor. The Corporate Debtor had filed an application bearing I.A. No. 4884/2022 to place on record the Report of the Local Commissioner dated 21.06.2022, who was appointed by the Hon'ble High Court of Delhi vide its Order dated 25.04.2022 stating that the 563 units of unsold inventory of iPhone 8 were put to inspection, out of which 562 units were found to be defective or 'dead on arrival'. It is further observed that the I.A. No. 4884/2022 was withdrawn by the Corporate Debtor, since it is not directly related to the instant case. It is made clear that we have not taken into account the contents of the Report of the Local Commissioner. However, the factum of calling Report and thereafter submitting the same before the concerned court indicate the existence of dispute about quality of the goods.

14. ………. However, in this regard, we observe that the Operational Creditor itself has filed a copy of the aforesaid Section 11 application before us, which indicate that the Corporate Debtor (Petitioner) had filed the Section 11 application against both the Apple India Pvt. Ltd. (Respondent No. 1) and Ingram Micro India Private Limited (Respondent No. 2 i.e. Operational Creditor herein). On the perusal of such application, it is observed that initially, the Operational Creditor was made a party to the said Arbitration proceedings, however, on the request of the Operational Creditor herein, the Hon'ble High Court of Delhi vide its Order dated 20.01.2023 deleted the name of the Respondent No. 2 therein, i.e. Ingram Micro India Private Limited from the array of parties on the ground that such Respondent No. 2 was not a party to the Arbitration

> *Agreement entered into between Bathla Teletech Private Limited and Apple India Pvt. Ltd. However, the fact remain is that although the name of the Operational Creditor herein was deleted from the array of parties, nevertheless, the dispute raised in the Arbitration proceedings with regard to the backend discount' therein, is an issue which is also raised before this Adjudicating Authority during the adjudication of the present matter and as such, substantiates the ground for the existence of the some kind of dispute with respect to the amount payable by the Corporate Debtor, which is also the subject matter of adjudication in the instant case. Further, the Hon'ble High Court of Delhi has already appointed an Arbitrator and the said dispute is pending before the Ld. Arbitrator."*

(xix) Relying on the above observation, the Adjudicating Authority concluded that there is pre-existing dispute between the parties, hence, application under Section 9 came to be rejected.

2. We have heard learned counsel for the Appellant as well as learned counsel appearing for the Respondent.

3. Learned counsel for the Appellant submits that the Adjudicating Authority committed error in rejecting application under Section 9 filed by the Appellant on alleged pre-existing dispute. It is submitted that there was no dispute of any kind with regard to invoices issued by the Appellant between 03.03.2021 to 16.03.2021 which were received by the Respondent without any protest. Goods have already been sold by the Respondent. Default has

been committed by the Corporate Debtor in making payment of the aforesaid invoices. The immediate correspondence between the parties after receipt of the supply clearly indicate acknowledgement of debt. Email dated 13.05.2021 and 17.05.2021 of the Corporate Debtor does not raise any kind of dispute with regard to above supplies. The bank guarantee given by the Corporate Debtor was invoked by the Appellant of Rs.2 Crores on 19.05.2021 towards the part-payment of outstanding, which has never been challenged by the Corporate Debtor. The cheques for balance amount of Rs.5,39,20,029/- was issued on 24.05.2021 which was a clear acknowledgement of the outstanding amount. Cheque was dishonoured, hence, the Appellant issued notice on 02.06.2021 under Section 138 of NI Act. Reply to Section 138 notice was given by the Corporate Debtor on 21.06.2021 where certain counter claims have been claimed by the Corporate Debtor which counter claim relate to unsold iPhone 8 of 2018 laying with the Corporate Debtor and certain backend discount which were to be claimed by the Corporate Debtor against Apple India. The counter claim raised in reply dated 21.06.2021 is clearly a moonshine defence and were not any kind of dispute with regard to supply made by the Appellant in 2021. In fact, in the reply dated 21.06.2021, the Corporate Debtor sought set off claim of Rs.5.39 Crores of the Appellant from the Counter claim by claiming balance of Rs.7.05 Crores. In the reply notice dated 21.06.2021, grievance and claim raised by the Corporate Debtor were against Apple India. Demand notice was issued by the Appellant on 07.08.2021 to which no reply was given by the Respondent and on 24.09.2021, Section 9 application was also filed. The notice was given for

arbitration by the Corporate Debtor against Appellant and Apple India and a petition under Section 11 was filed by the Corporate Debtor in Delhi High Court on 20.08.2023 where the Appellant has already been deleted. Before the Delhi High Court, the Corporate Debtor obtained a Local Commissioner report which was sought to be filed as document before the Adjudicating Authority, which was not permitted on 03.03.2023. The Adjudicating Authority relied on Local Commissioner's report which was not even taken on record. Any reliance by the Adjudicating Authority on the arbitration proceeding which was initiated by the Corporate Debtor against Apple India was wholly irrelevant with respect to claim of the parties. The reliance on the reply to Section 138 notice is wholly incorrect and cannot furnish any basis for holding pre-existing dispute. There was no pre-existing dispute between the parties with respect to supplies made by the Appellant of iPhone 11 and 12 and the unsold inventory received by the Corporate Debtor of iPhone 8 in 2018 has on relevance and nor they can be any basis for claiming any dispute.

4. Learned counsel for the Respondent refuting the submissions of the Appellant submits that there was pre-existing dispute prior to issuance of demand notice. The Corporate Debtor has already given reply dated 21.06.2021 to the notice dated 02.06.2021 issued under Section 138 of the NI Act which reply clearly has mentioned about the dispute between the parties. Further regarding defective/ dead inventory, the claim exceeded Rs.5 Crore and likewise backend incentive of more than Rs.3 Crore was claimed. The above dispute goes to the root of the alleged operational debt. Backend discount has to be rooted from the distributor/Appellant. The dispute raised

by the Corporate Debtor in its reply notice dated 21.06.2021 was bonafide. The Local Commissioner's report confirming 562 inoperative devices clearly demolish the Appellants' attempt to portrait dispute as sham or illusory. IBC cannot be used a recovery forum. The application was also barred by Section 10A.

5. Along with the Written Submissions which have been filed by the Respondent on 08.05.2026, Respondent has also filed a copy of award dated 13.09.2025 and copy of notice dated 21.02.2025. No liberty was granted to the Respondent to file any document along with the Written Submission. Filing of document along with Written Submission which document were not part of the record of the appeal cannot be approved. Documents which have been filed along with the Written Submission being not part of the record of the appeal cannot be looked into for any purpose nor need any consideration.

6. The law with respect to Section 8 and 9 of the I&B Code and the scope and ambit regarding considering existence of dispute between the parties with reference to Section 9 application has been settled by the Hon'ble Supreme Court in its judgment in ***Mobilox Innovations Private Ltd vs Kirusa Software Private Ltd (2018) 1 SCC 353,*** where in Para 24 and 40 following was laid down:

> *"24. The scheme under Sections 8 and 9 of the Code, appears to be that an operational creditor, as defined, may, on the occurrence of a default (i.e., on non-payment of a debt, any part whereof has become due and payable and has not been repaid), deliver a*

demand notice of such unpaid operational debt or deliver the copy of an invoice demanding payment of such amount to the corporate debtor in the form set out in Rule 5 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 read with Form 3 or 4, as the case may be (Section 8(1)). Within a period of 10 days of the receipt of such demand notice or copy of invoice, the corporate debtor must bring to the notice of the operational creditor the existence of a dispute and/or the record of the pendency of a suit or arbitration proceeding filed before the receipt of such notice or invoice in relation to such dispute (Section 8(2)(a)). What is important is that the existence of the dispute and/or the suit or arbitration proceeding must be pre-existing i.e. it must exist before the receipt of the demand notice or invoice, as the case may be.. ...

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."*

7. The question to be considered in this appeal is as to whether there was pre-existing dispute between the parties as per test laid down by the Hon'ble Supreme Court in the above case, in facts of the presser case, so at to lead rejection of Section 9 application filed by the Appellant.

8. Application under Section 9, as noted above, was based on invoices issued by the Appellant to the Respondent between 03.03.2021 to 16.03.2021 which are sale of the iPhone 11 and 12 series mobile phones as well as iPads of Rs.7.33 Crores. Said supplies were duly received by the Respondent and without any objection and as pleaded by the Appellant the said materials have already been sold by the Respondent. The sale was made by the Appellant, who is a distributor of the Apple to the Respondent, who is a reseller of the Apple items. The Sale Terms and Conditions have been brought on the record as Annexure A-3 of the Appeal, which terms and conditions were agreed by the Respondent on 25.02.2021. The Clauses of said Sales Terms and Conditions stipulates that relationship of the parties was that of Independent Contractors. Clause 13 of Sales Terms and Conditions is as follows:

*"**13. RELATIONSHIP OF THE PARTIES.***

Purchaser's relationship with Ingram will be that of an independent contractor. Purchaser will not have, and will not represent that ii has, any power, right or authority to bind Ingram, or to assume or create any obligation or responsibility, express, implied or by appearances, on behalf of Ingram or in Ingram's name, except as herein expressly provided. Nothing slated in these terms and conditions will be construed as constituting Purchaser and Ingram as partners, employer/employee, franchisor/franchisee, or principal/agent between the parties. Purchaser will make no warranty, guarantee or representation, whether written or oral, on behalf of Ingram's or the manufacturer or Publisher of the Products."

9. After sale of iPhone 11 and 12 and iPad by invoices between 03.03.2021 to 16.03.2021, correspondence was made between the parties by email, as on record. It is useful to notice said emails. On 11.05.2021, Appellant sent an email informing that the amount overdue is Rs.7,32,89,324/- which Respondent may arrange to provide on urgent basis. Email dated 11.05.2021 is as follows:

"On Tue, May 11, 2021 at 8:27 PM Tanwar, Yashpal wrote:

Dear Raman,

Bathla Teletech Overdue is INR: 73289324, whereas some invoices going to touch ageing of approx. 60 day of overdue, as we have not received any payment from

past approx. 60 days, this is show Bathla Teletech intention which is not in favor to close the overdue amount, so please try to maintain business hygiene and arrange to provide overdue amount on most urgent basis.

Best Regards,

Yashpal
Ingram Micro India Pvt Ltd.
MIRA Corporate Suites,
B-1 & C-1, Plot No. 1 & 2,
lshwar Nagar, New Delhi-110065
Mobile +91-9711920111
Yashpal.Tanwar@ingramMicro.Com"

10. The said email was replied by the Respondent on 13.05.2021. Reply to email indicate that the claim was not disputed rather it was mentioned on behalf of the Respondent that intention is to clear all payables. Email dated 13.05.2021 is as follows:

"From: raman bathla

Sent: Thursday, May 13, 2021 9:10 AM

To: Tanwar, Yashpal

Cc: bathlateletech.delhi@gmail.com; Singh, Mukesh (Pune); pyush_tandon@apple.com: Sudipto_dhar@apple.com; Deepinder Jaiswal deepinder_jaiswal@apple.com>; Achawal, Sanjay ; Faruqui, Faisalkhan ; Malhotra, Vishal ; Mishra, Biplav

Subject: Re: [EXTERNAL} Re: Bathla Teletech AR-OD Details as on 12/04/2021- 7.33 cr

Hi Yashpal

> *Had there been an intention not to pay, I wouldnt have shared the stock sheet for SRN. The intention to clear all payables is one of our fundamentals- though in this case we are just requesting the mode of settlement to be by way of SRN rather than RTGS.*
>
> *Regds*
>
> *raman bathla"*

11. Subsequently, the Appellant again sent an email asking the Respondent to share the payment plan of Rs.7.33 Crores. Email dated 15.05.2021 sent by the Appellant to Respondent is as follows:

> *"On Sat, May 15. 2021 at 3:49 PM Mishra, Biplav wrote:*
>
> *Dear Raman*
>
> *As per team call held on 13th may, you have to share the payment plan of 7.33Cr on 14th May, 2021, but till time we are not getting any payment plan from your side Pls share the payment plan today*
>
> *Regards*
>
> *Biplav"*

12. On 17.05.2021, Respondent sent an email to the Appellant. Email dated 17.05.2021 indicates that Respondent has Apple inventory worth Rs.20 Crore in hand, they will be able to share a more specific plan once lockdown opens and they have a better picture of sales and collection. Email dated 17.05.2021 is as follows:

"From: raman bathla <rarnanbathla@gmail.com>

Sent: Monday, May 17, 2021 12:34 PM

To: Mishra, Biplav <Biplav. Mishra@ingrammicro.com>

Cc: bathlateletech.delhi@gmail.com; Singh, Mukesh (Pune) Mukesh Singh2@ingrammicro.com; pyush_tandon@apple.com;

Sudipto_dhar@apple,com; Deepinder Jaiswal deepinder_jaiswal@apple.com>; Faruqui, Faisalkhan <Faisalkhan.Ffaruqui@ingrammicro.com>; Malhotra, Vishal <VishalMalhotra@ingrammicro.com>; Achawal, Sanjay <Sanjay Achwal@ingrammicro.com>; Tanwar, Yashpal <Yashpal.Tarnwar@ingrammicro.com>

Subject: Re: [EXTERNAL] Re: Bathla Teletech AR-OD Details as on 12/04/2021-7.33 cr

Hi Biplav

As discussed in the meeting, we are currently having apple inventory worth more than 20cr in hand.

As you know, the lockdown has been extended for another week and once it opens, we shall have more clarity on our fund flow based on how last we start recovering our dues from the market. As discussed in the meeting, delhi lockdown happened at a very critical time thus depriving us of the last 45 days to clear off our inventory, and once our agreement ends on 29th, it's going to be a further uphill task to sell our inventory.

Hence we shall be able to share a more specific plan once lockdown opens and we have a better picture of sales and collection Meanwhile, I would request you to withdraw the BG invocation which has been sent to our bank on an immediate basis, since it will hinder the

cordial discussions that we are having. I am getting continuous reminders from bank for the same.

Looking forward to your support and co-operation in this regard

regds

raman bathla"

13. It is further relevant to notice that the Respondent had given two post-dated cheques dated 24.05.2021 of Rs.1 Crore and Rs.4,39,20,029/- to clear the outstanding dues. The cheques when presented were returned with the reason "Payment Stopped by Drawer". When cheques were dishonoured, a legal notice was issued on 02.06.2021 by the Appellant under Section 138 of the Negotiable Instruments Act. The said legal notice under Section 138 was replied by the Respondent on 21.06.2021, which reply has been relied by the Adjudicating Authority in finding out a pre-existing dispute between the parties. The reply notice dated 21.06.2021 has been referred and relied by the Adjudicating Authority in Para 12, as extracted above. While replying to Section 138 notice, the Respondent raised various counter claims against the Appellant to the extent of Rs.7,05,36,162/- pertaining to 563 units of unsold inventory of iPhone 8 and certain backend discount which Respondent claims to be entitled for. In the reply notice, the Respondent has also relied on Reseller Agreement between Respondent and Apple. Clause 14.5 of the said agreement has also been noticed in the reply, which is as follows:

"14.5 Disposition of Products Upon Expiration or Termination Within ten (10) days after expiration or

termination of the Agreement, Reseller will provide a list of all Authorized Products remaining in Reseller's inventory to Apple. Apple reserves the first right to purchase such Authorized Products, or shall instruct Reseller as to their disposition and Reseller shall promptly comply with Apple's instructions. If Apple decides to repurchase from Reseller new and unsold Authorized Products remaining in Reseller's inventory at the time of Agreement expiration or termination, the price will be either: (i) the price at which Reseller originally purchased such Authorized Product(s) from Apple if the Authorized Product(s) remain on Apple's then-current Apple Reseller Price List; or (ii) ten percent (10%) off the price at which Reseller originally purchased the Authorized Product(s) if the Authorized Product(s) are not on a then-current Apple Reseller Price List. Upon Apple's acceptance of such Authorized Products. Apple will issue a credit to Reseller in the amount of Apple's purchase 10 offset any amount due Apple by Reseller or, if there is no amount due Apple by Reseller, Apple will pay Reseller forty-five (45) days from Apple's acceptance of Authorized Products. Upon any expiration or termination of the Agreement. If Apple does not purchase Authorized Products remaining in Reseller's inventory, Reseller may sell the Authorized Products or otherwise dispose of the Authorized Products as may be directed by Apple in writing."

14. It is on the record that the Reseller Agreement between the Respondent and Apple came to an end on 29.05.2021 and Respondent was claiming return of some Apple inventory. It is relevant to notice that return of the Apple

inventory which was claimed by Respondent was Apple mobile phones of iPhone 8 series, which were sold in the year 2018. There is no case of any return of inventory which was sold to the Respondent from 03.03.2021 to 16.03.2021.

15. The reply notice which has been much relied by the Adjudicating Authority was reply to notice under Section 138. When cheques amounting to Rs.5,39,20,029/- were issued by Respondent to the Appellant towards outstanding pertaining to invoices dated 03.03.2021 to 16.03.2021 which cheques were dishonoured on 28.05.2021, the giving of cheques are an acknowledgment of liability. Further cheques which were referred in notice dated 02.06.2021 were given on 24.05.2021 i.e. much after invoices dated 03.03.2021 to 16.03.2021. It is useful to notice Para 6 of legal notice dated 02.06.2021:

> *"6. That in discharge of legally enforceable debt, aforesaid cheques totalling Rs. 5,39,20,029/- (Rupees Five Crore Thirty-Nine Lakh Twenty Thousand Twenty-Nine Only) was presented by our client on 24th May 2021 for realization with their Bankers, HDFC Bank, Vikhroli Branch, Mumbai. Details of the cheques presented by our client on 24th May 2021 for realization with their Bankers are as below –*

S. No.	***Cheque No.***	***Cheque Date***	***Cheque Amount (Rs.)***	***Drawn On***
1.	*000701*	*24th May 2021*	*1,00,00,000/-*	*HDFC Bank Ltd., A-37-39, Ansal Towers, Commercial Complex, Mukherjee*
2.	*000702*	*24th May 2021*	*4,39,20,029/-*	

				Nagar, New Delhi - 110009
	Total		***5,39,20,029/-***	

16. Thus, cheques were issued subsequent to invoices and were dated 24.05.2021. When we look into the reply dated 21.06.2021, in which reply issuance of Cheques by Respondent is not disputed rather the claim raised by the Respondent was with regard to unsold iPhone 8 inventory purchased in the year 2018 and backend discount claimed by the Respondent. Reply notice dated 21.06.2021 in essence was counter claim. In reply to notice under Section 138, there is no question of claiming any counter claim in 138 proceeding. The Adjudicating Authority relying on the counter claim raised by the Respondent in reply dated 21.06.2021 jumped to the conclusion that the dispute was already raised by Respondent in reply dated 21.06.2021.

17. Learned counsel for the Appellant has relied on judgment of Hon'ble Supreme Court in ***"(2022) 15 SCC 591, ZNK Traders Pvt. Ltd. vs. Kishore Shankar Signapurkar & Anr."*** to support his submission that dispute raised for the first time in reply to Section 138 in NI proceeding cannot constitute a genuine pre-existing dispute under Section 8 and 9 of the IBC. The Hon'ble Supreme Court in the above case was considering an appeal against an order of the NCLAT where NCLAT has set aside an order of NCLT admitting Section 9 application observing that prior to demand notice the Corporate Debtor has raised question of standard of goods in reply to notice under Section 138. The Hon'ble Supreme Court held that no such dispute

was taken by the Corporate Debtor till the cheques were issued which came to be dishonoured. It is useful to notice Paras 2 and 3 of the judgment of the Hon'ble Supreme Court:

> *"2. Feeling aggrieved and dissatisfied with the impugned judgment and order dated 29-1-20191 passed by the National Company Law Appellate Tribunal (for short "NCLAT"), New Delhi in Company Appeal (AT) (Insolvency) No. 739 of 2018 by which NCLAT has allowed the said appeal preferred by the respondent herein-corporate debtor and by quashing and setting aside the order passed by the National Company Law Tribunal ("NCLT" for short), Mumbai admitting Section 9 IBC, the original appellant has preferred the present appeal.*
>
> *3. At the outset, it is required to be noted that, by the impugned judgment and order[1], NCLAT has set aside the order passed by NCLT admitting Section 9 application solely on the ground that much prior to issuance of the demand notice under Section 8(1) of the Insolvency and Bankruptcy Code, 2016 the "corporate debtor" raised the question of standard of goods supplied by the "operational creditors" up to 5-8-2017. However, it is required to be noted that the dispute with respect to the inferior quality was taken by the corporate debtor much belatedly after the transaction between the parties and the same was taken for the first time in the reply to the notice under Section 138 of the NI Act. No such dispute was taken by the corporate debtor till the cheques were issued which came to be dishonoured and till the proceedings under Section 138*

> *of the Negotiable Instruments Act were initiated. The aforesaid aspect has not been properly appreciated by NCLAT. Under the circumstances, the impugned order passed by NCLAT is unsustainable."*

18. Learned counsel for the Appellant has further relied on judgment of this Tribunal in ***"Sudhi Sachdev vs. APPL Industries Ltd., 2018 SCC OnLine NCLAT 775"***. This Tribunal held in the above case that any proceeding pending under NI Act cannot be held to be dispute with respect to Section 9 IBC proceeding. In Para 6 of the judgment following was held:

> *"6. In the present case, it is not in dispute that there is a debt payable to the Operational Creditor and default*
>
> *on the part of the Corporate Debtor. The pendency of the case under Section 138/441 of the Negotiable Instruments Act, 1881, even if accepted as recovery proceeding, it cannot be held to be a dispute pending before a Court of law. Thereby we hold that the pendency of the case under Section 138/441 of Negotiable Instruments Act, 1881 actually amounts to admission of debt and not an existence of dispute. We find no merit in this appeal. It is accordingly dismissed. No Costs."*

19. We also need to notice case relied by learned counsel for the Respondent. Learned counsel for the Respondent has placed reliance on judgment of the Hon'ble Supreme Court in ***"Innoventive Industries Ltd. vs. ICICI Bank & Anr., (2018) 1 SCC 407"*** for the proposition that the Hon'ble Supreme Court has recognised that proceedings before NCLT are summary in

nature and disputed questions requiring details adjudication cannot be determined in insolvency jurisdiction.

20. There cannot be any dispute to the above proposition. In Section 9 proceeding, the Adjudicating Authority is not to adjudicate dispute between the parties. In Section 9 application, the Adjudicating Authority has to look as to whether there is a debt and default. We have already noticed the judgment of Hon'ble Supreme Court in ***Mobilox Innovations Pvt. Ltd. (Supra)*** where the Hon'ble Supreme Court has laid down that 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.

21. Learned counsel for the Respondent has further relied on judgment of this Tribunal in ***"Rakesh Kumar vs. Flourish Paper & Chemicals Ltd., Company Appeal (AT) (Ins.) No.1161 of 2022"*** where this Tribunal reiterated that dispute involving claims and counter claims cannot be adjudicated in summary insolvency jurisdiction. We are of the view that above proposition is well settled. Thus, the dispute which is sought to be raised by the Corporate Debtor has to be looked into as per the parameters laid down by the Apex Court in ***Mobilox Innovations Pvt. Ltd. (Supra).*** The Adjudicating Authority has not to adjudicate as to whether the dispute sought to be raised shall be finally upheld or not. Another judgment relied by the Respondent is judgment of this Tribunal in ***"FTI Consulting India Pvt. Ltd.***

vs. MGF Developments Ltd., Company Appeal (AT) (Ins.) No.1971 of 2025"

where this Tribunal in Paras 26, 28 and 29 laid down following:

> *"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.

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. 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."*

22. The above case does not help the Respondent in the facts of the present case. In the above case, demand notice given by the Operational Creditor was replied by the Corporate Debtor which reply to demand notice in detail has pleaded the dispute between the parties. This Tribunal in the above judgment has noted and extracted relevant part of the reply to demand notice, which is noted in Para 14 and 15 of the judgment. In the above case this Tribunal came to the conclusion that dispute was raised by the Corporate Debtor in reply to demand notice which could not have been said to be patently feeble legal argument. The order of the Adjudicating Authority rejecting Section 9 application was upheld. The above case is clearly distinguishable and does not held the Respondent in the present case.

23. The judgment of the Hon'ble Supreme Court in ***ZNK Traders Pvt. Ltd. (Supra)*** fully supports the submission of learned counsel for the Appellant

that reply to notice under Section 138 of NI Act cannot be basis for coming to conclusion that there was any pre-existing dispute. Reply notice was only with respect to cheques dishonoured and the fact that cheques were issued by the Corporate Debtor to the Appellant is an acknowledgment of debt and there is nothing on the record to indicate that before issuance of cheques for the balance outstanding amount of Rs.5,39,20,029/- any kind of dispute with regard to supply, quality of goods or any other aspect was ever raised. The claim of the Appellant as per invoices of 2021 were undisputed and were duly acknowledged by the Corporate Debtor, as noted above.

24. The Adjudicating Authority has not adverted to relevant emails communication between the parties which took place immediately after invoices dated 03.03.2021 to 16.03.2021. We have already noticed email communication beginning from 11.05.2021 to 17.05.2021 between the parties. The email which was sent immediately after receipt of invoices does not raise any dispute or counter claim rather tenor of the email intimated that the outstanding amount was not disputed. Ignoring the relevant immediate correspondence between the parties, the Adjudicating Authority relied on reply to notice under Section 138. Issuance of cheques for amount of Rs.5,39,20,029/- on 24.05.2021 was sufficient to draw an inference that amount was not disputed when cheques were issued by the Respondent.

25. Coming to the next reason given by the Adjudicating Authority in Para 13, as noted above, which was with respect to a report dated 21.06.2022 of Local Commissioner appointed by the Delhi High Court in proceeding initiated

by Respondent under Arbitration and Conciliation Act. The said report which pertain to 563 units iPhone 8 inventory, which was found by the Local Commissioner was sought to be placed by the Respondent before the Adjudicating Authority by an application I.A. No.4884 of 2022. The Adjudicating Authority itself on 03.03.2023 disposed of the IA, where Respondent withdrew the application. It is useful to notice order dated 03.03.2023 passed in I.A. No.4884 of 2022, which is to the following effect:

> *"**ORDER***
>
> ***IA/4884/2022:-***
>
> *Heard the submissions made by Ld. Counsel for the Corporate Debtor who is the applicant in this application. This is an application filed under Rule 11 of NCLT Rules, 2016 for placing additional documents on record. On perusal of the document, it transpires that the document is a report of the Local Commissioner in respect of local commission executed on 07.06.2022. Though the Operational Creditor was initially made as a party in this matter, subsequently, the Operational Creditor's name was deleted from the array of parties. Therefore, this is a document which is not directly related to the matter and the document produced now by the Corporate Debtor is related to a proceeding initiated much after the filing of Section 9 application. Therefore, liberty is granted to Corporate Debtor to withdraw the same. Corporate Debtor has opted for withdrawal of the same. Therefore, the prayer for withdrawal is allowed and IA/4884/2022 stands disposed of.*

As the pleadings in this matter are completed, list the main matter i.e. IB-629/ND/2021 for arguments on 10.03.2023."

26. When the Local Commissioner's report was not taken on record by the Adjudicating Authority since application itself was withdrawn, we fail to see any justification in relying on factum of calling report. Adjudicating Authority made following observation in Para 13:

> *".....However, the factum of calling Report and thereafter submitting the same before the concerned court indicate the existence of dispute about quality of the goods."*

Further, the above proceedings were after issuance of demand notice.

27. We are of the view that the above observation of the Adjudicating Authority was wholly erroneous. When the Local Commissioner's report, which relates to iPhone 8 inventory pertaining to sale in the year 2018, was not taken on the record by passing order dated 03.03.2023 by the Adjudicating Authority, reliance on the said report to find existence of dispute was wholly erroneous. Dispute about quality of goods regarding iPhone 8 was wholly irrelavant and cannot be approved.

28. Now coming to the third reason given by the Adjudicating Authority in para 14, as noted above, which related to proceeding initiated under Section 11 of the Arbitration and Conciliation Act, 1996 by the Respondent before the Delhi High Court. In para 14, the Adjudicating Authority has noted that

"…..the dispute raised in the Arbitration proceedings with regard to the 'backend discount' therein, is an issue which is also raised before this Adjudicating Authority during the adjudication of the present matter and as such, substantiates the ground for the existence of the some kind of dispute with respect to the amount payable by the Corporate Debtor, which is also the subject matter of adjudication in the instant case.". We have noted above that in Section 11 application filed by the Respondent before Delhi High Court, Respondent has impleaded initially Apple India Pvt. Ltd. and Appellant as Respondent Nos 1 and 2. Objection was raised by the Appellant before Delhi High Court that agreement under which the arbitration is sought the Appellant is not party, which argument was accepted and Appellant was deleted from the said proceeding. The order of the Delhi High Court dated 20.01.2023 is brought on the record, which order is as follows:

"O R D E R
20.01.2023

1. This petition has been filed under Section 11 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as the 'Act') seeking appointment of an Arbitrator for adjudicating the disputes that have arisen between the parties in relation to the 'Apple Authorized Reseller Agreement' dated 30.09.2018 executed between the petitioner and the respondent no.1.

2. On the objection of the respondent no.2 that the respondent no.2 is not a party to the arbitration agreement, the learned senior counsel for the petitioner

> *confines the prayer for appointment of an Arbitrator only against the respondent no.1 qua the disputes that have arisen between the parties in relation to the abovementioned agreement.*
>
> *3. The learned senior counsel for the respondent no.1 does not oppose the prayer made.*
>
> *4. Accordingly, the respondent no.2 is deleted from the array of parties. I appoint Mr. Justice Pradeep Nandrajog, (Retired Chief Justice of Bombay High Court) as the learned Sole Arbitrator for adjudicating the disputes that have arisen between the petitioner and the respondent no.1 in relation to the above-mentioned agreement.*
>
> *5. The learned Sole Arbitrator shall give the disclosure under Section 12 of the Act before proceeding with the reference.*
>
> *6. The fee of the learned Sole Arbitrator shall be governed by Schedule IV of the Act.*
>
> *7. The petition is allowed in the above terms."*

29. Thus, the arbitration proceeding, consequent to order dated 20.01.2023, is between the Respondent and the Apple India Pvt. Ltd. in which proceeding the Appellant is not a party and has been deleted by the Delhi High Court. As noted above, notice for initiating said arbitration proceeding was issued by the Respondent much subsequent to filing of Section 9 application. The Adjudicating Authority also committed error in relying on the arbitration proceeding between the Respondent and the Apple India Pvt.

Ltd., which proceeding were initiated much subsequent to filing of Section 9 application. On basis of the said arbitration proceeding the Adjudicating Authority erroneously observed that dispute raised in the arbitration proceeding substantiates the ground for the existence of some kind of dispute with respect to the amount payable by the Corporate Debtor. We are of the view that the above observation made in Para 14 by the Adjudicating Authority rely on claim of backend discount, which is subject matter of arbitration proceeding is wholly erroneous and unsustainable.

30. We have noticed above that there are only three reasons given by the Adjudicating Authority for rejecting Section 9 application which are contained in Paras 12, 13 and 14. In view of the foregoing discussion, we find that none of the reasons given in Paras 12, 13 and 14 by the Adjudicating Authority are sustainable. No other material is referred to or relied by the Adjudicating Authority to come to the conclusion that there is pre-existing dispute.

31. There are other relevant materials on the record which clearly indicate that contemporaneous to issuance of invoices dated 03.03.2021 to 16.03.2021, no dispute was raised regarding quality or supply. The submission which is advance by learned counsel for the Respondent to support the pre-existing dispute is reliance on the supply of iPhone 8 in the year 2018 by other authorised distributors including the Appellant. Learned counsel for the Appellant has rightly relied on balance confirmation which was issued by the Appellant to the Respondent as on 30.09.2020, where balance payable by Respondent as on 30.09.2020 was Rs.18,02,930/- which

balance confirmation is filed as Annexure A-7. The above balance confirmation which was sent by the Appellant to the Respondent was confirmed, which is apparent from the endorsement by the Respondent i.e. "*closing balance as above is confirmed*". It is useful to extract balance confirmation at page 172 of the paper book:

"ACCOUNT STATEMENT - Ingram Micro India Pvt. Ltd. PAGE: 2
CUSTOMER CODE: 50-BATHAL-000 O/S: YEKB
CUSTOMER BRAN: 50 I/S: YEKB
CUSTOMER NAME: BATHLA TELETECH PVT. LTD
CUSTOMER ADDR: NO.210,2ND FLOOR,
GUJRAWALA TOWN,
PHASE-2,
NEW DELHI 110009

STATEMENT OF TRANSACTIONS DURING THE PERIOD 16/09/2020 TO 30/09/2020 - IN INDIAN RUPEE

SR NO	INVOICE NBR	CHEQUE NO /CN NO/DN NO	INVOICE/CHQ DATE	DUE DATE	REFERENCE	DEBITS	CREDITS
1.		05UVGB	21/09/2020		PAYMENT ON ACCOUNT		3,228,472.00
2		05Y5SA	28/09/2020		PAYMENT ON ACCOUNT		601,226.00
3		05Z0IW	30/09/2020		PAYMENT ON ACCOUNT		1,000,000.00
4	531020008538 65		30/09/2020	30/10/2020	300920-1	158,214.06	
5	531D2000853871		30/09/2020	30/10/2020	4433	1,636,689.35	
TOTALS						1,794,903.41	4,829,698.00
						(B)	(C)
CLOSING BALANCE AS ON			30/09/2020	(A+B-C)			1,802,930.06

NOTE: 1. CONTENTS OF THIS STATEMENT WILL BE CONSIDERED AS CORRECT, IF NO DISCREPANCY IS REPORTED TO THE COMPANY WITHIN 10 DAYS OF STATEMENT DATE.
2. INTEREST @ 2% PER MONTH IS PAYABLE ON THE PAYMENTS RECEIVED AFTER THE DUE DATE.
3. IN CASE OF ANY ACCOUNTING QUERIES YOU MAY MAIL TO CCD@INGRAMMICRO.CO.IN WITH DETAILS OF THE BRANCH YOU"

CLOSING BALANCE AS ABOVE CONFIRMED
BATHLA TELETECH PVT. LTD
STAMP & SINGNATURE"

32. We are conscious that in proceeding under Section 9 what is required to be looked into to come to the conclusion there is pre-existing dispute or not is only whether allegations are supported by evidence and they are not only moonshine defence. When there is ample material on record especially email correspondence between the parties immediately after issuance of invoices dated 03.03.2021 to 16.03.2021, where the respondent has not disputed the claim, the dispute sought to be raised subsequent to issuance of cheques for the outstanding amount by the Respondent by cheques dated 24.05.2021, dishonoured on 28.05.2021, said defence is clearly moonshine defence and cannot be relied in view of the acknowledgment of the outstanding reflected from materials, as noted above. Further, notice under Section 138 of the Negotiable Instruments Act was issued by the Appellant on account of dishonour of Cheques which were admittedly issued by the Respondent on 24.05.2021. Issuance of cheques itself is another acknowledgement of outstanding dues and after dishonour of cheques, notice was issued. Various counter claims raised in reply dated 21.06.2021 to Section 138 notice cannot be basis to come to the conclusion that there is pre-existing dispute between the parties.

33. Learned counsel for the Respondent has also advanced submission that application filed by the Appellant under Section 9 was barred by Section 10A. The above submission which was made before the Adjudicating Authority has been considered and already rejected. The Adjudicating Authority having already given reason as to why Section 9 application is not barred by Section 10A. The submission of the Respondent cannot be accepted.

34. The sequence of events and facts brought on the record in the proceeding under Section 9 clearly indicated that Appellant has successfully proved existence of debt and default committed by Corporate Debtor. Rejection of the Section 9 application on the ground that there is pre-existing dispute is unsustainable. For reasons as noted above, we are of the view that appeal filed by the Appellant deserves to be allowed and the Adjudicating Authority committed error in rejecting the application under Section 9. We, however, are of the view that before the Corporate Debtor is admitted into CIRP, an opportunity be given to the Respondent to discharge the debt amounting to Rs.5,70,79,189.27/-. In result of the above discussion, we allow the appeal in following manner:

(i) The order dated 03.12.2024 rejecting CP IB No. 629/(ND)/2021 is set aside.

(ii) The Adjudicating Authority is directed to admit the Section 9 application and pass a consequential order.

(iii) It shall be open for the Respondent to discharge the debt of Rs.5,70,79,189.27/- by making payment to the Appellant and filing proof of payment before the Adjudicating Authority within a period of 30 days. Failing which, the Adjudicating Authority to pass an order admitting Section 9 application, as indicated above.

Parties shall bear their own costs.

[Justice Ashok Bhushan]
Chairperson

[Barun Mitra]
Member (Technical)

NEW DELHI

21st May, 2026

Archana