

**NATIONAL COMPANY LAW APPELLATE TRIBUNAL**  
**PRINCIPAL BENCH: NEW DELHI**

**Company Appeal (AT) (Insolvency) No. 2287 of 2024**

(Arising out of the Order dated 09.09.2024 passed by the  
'Adjudicating Authority' (National Company Law Tribunal,  
Chandigarh Bench, Court-I) in CP (IB) No.  
805/CHD/PB/2023)

**IN THE MATTER OF:**

**Sukhbir Singh**

Suspended Director and Shareholder of  
Farm2energy Private Limited  
S/o Sh. Teja Singh,  
Address: 48-B, Tagore Nagar, Ludhiana,  
Punjab – 141001

**...Appellant**

**Versus**

1. **Verbio India Private Limited**

CIN: U40107CH2016PTC042704  
Regd Office: Godrej Eternia Building,  
Plot No. 70, Tower-A, Office No. W3M,  
3<sup>rd</sup> Floor, Commercial Complex,  
Industrial Area, Phase-1 Chandigarh,  
India 160002

**...Respondent No.1**

2. **Harish Malhotra**

Interim Resolution Professional (IRP)  
IBBI Registration No. IBBI/IPA-001/IP-  
P00728/2017-2018/11223  
Address: 511-A, Garden Heights  
Sirhind Bye Pass Road, Near DMW,  
Patiala, Punjab- 147001

**...Respondent No.2**

**Present:**

**For Appellant** : Mr. Shubham Gupta, Advocate

**For Respondent** : Mr. Lalit Kakar, Advocate for R1  
Mr. Nahush Jain, Adv. for R-2.

**J U D G M E N T**  
**(Hybrid Mode)**

**[Per: Arun Baroka, Member (Technical)]**

The present appeal has been filed by Mr. Sukhbir Singh, Suspended Director & Shareholder of Farm2Energy Private Limited, pursuant to the order of National Company Law Tribunal, Chandigarh Bench, Court I

(hereinafter referred to as the "Adjudicating Authority") dated 09.09.2024 in Company Petition (IB) No. 80/CHD/PB/2023 by which the CIRP was initiated against the Appellant's company under Section 9 of the Insolvency and Bankruptcy Code, 2016. Appellant claims that the Operational Creditor deliberately concealed the pendency of disputes between the parties and has inherent technical defects. Further it claims that the principles of natural justice have been violated in deciding the Application under Section 9 of the Insolvency and Bankruptcy Code, 2016 ("Code").

**Brief facts of the Csase**

2. 19.07.2022: The Operational Creditor entered into an agreement with the Corporate Debtor for supply of Paddy Biomass. The agreement is accompanied by a Deed of Hypothecation of assets of the Corporate Debtor. The total consideration amount agreed between the parties was ₹4,40,00,000/- for supply of 20,000 tons of Biomass Bales. The period of supply of the biomass bales was from 15.09.2022 to 15.12.2022.

3. 20.07.2022: As per the agreement the Operational Creditor paid an amount of ₹77,00,000/- to the Corporate Debtor towards advance or the supply of biomass bales.

4. 18.08.2022: As per the agreement, the Operational Creditor paid a further amount of ₹77,00,000/- to the Corporate Debtor towards advance or the supply of biomass bales. Thus, a total advance amount of ₹1,54,00,000/- was paid to the Corporate Debtor, constituting 35% of the total agreement value.

5. 28.10.2022: The supply of biomass bales by the Corporate Debtor to the Operational Creditor is started.
6. Till 15.12.2022: The supplies made by the Corporate Debtor to the Operational Creditor was accepted and rejected towards each such supply made. Hence, there was a non-acceptance of goods supplied by the Corporate Debtor. The quality of the goods not accepted on the grounds of moisture levels in the biomass bales.
7. 15.12.2022: The agreement between the parties provided that the agreed quantity of 20,000 tons of biomass bales to be supplied by 15.12.2022.
8. 06.01.2023: The Operational Creditor issued a legal notice upon the Corporate Debtor for refund.
9. 19.01.2023: The Statutory Notice under Section 8 of Insolvency and Bankruptcy Code, 2016 duly served upon the Corporate Debtor.
10. 29.01.2023: Statutory period of 10 days expired and there was no response much less objection from the Corporate Debtor. Hence, the present application for claim of ₹1,19,53,864.00 along with interest at the rate of 9% per annum.
11. 09.09.2024: National Company Law Tribunal, Chandigarh Bench, Chandigarh admitted the CIRP Application CP (IB) No. 80/CHD/PB/2013

u/s 9 of the Insolvency & Bankruptcy Code, 2016 filed by the Operational Creditor against the Corporate Debtor, and ordered commencement of the CIRP.

**Submissions of the Appellant**

12. The Appellant/Corporate Debtor was not a "Corporate Debtor" in terms of the provisions of the Code as the alleged debt owed to the Operational Creditor did not fall within the definition of "Operational Debt" in terms of Section 5(8)(f) of the Code. The Operational Creditor has not declared on which basis, document or record is the alleged amount stated to be a 'claim' and further a 'debt' within the provisions of the I&B Code, 2016.

13. The alleged dues of Respondent No. 1 are non-existent, and hence, the right to payment' that forms the essence of a claim under Section 5(6) is not present in the Application. Section 5(6) of the Code is reproduced hereunder:

“Section 5(6) "claim" means-

- (a) a right to payment, whether or not such right is reduced to judgment, fixed, disputed, undisputed, legal, equitable, secured, or unsecured;
  
- (b) right to remedy for breach of contract under any law for the time being in force, if such breach gives rise to a right to payment, whether or not such right is reduced to judgment, fixed, matured, unmatured, disputed, undisputed, secured or unsecured.”

14. The alleged dues of Respondent No. 1, does not constitute 'debt', as it is a liability in respect of a claim which is due. However, there is no debt due or payable and hence for any Application to be filed under Section 9 of the Code, the element of 'debt' is not present in the Application. Section 5(11) of the Code is reproduced hereunder:

“(11) "debt" means a liability or obligation in respect of a claim which is due from any person and includes a financial debt and operational debt”

15. There were no documents on record to prove that the Corporate Debtor has admitted any dues payable towards the Respondent No. 1.

16. The Operational Creditor had no locus to proceed against the Corporate Debtor under Section 9 of the Code, as the alleged debt owed by the Corporate Debtor was pursuant to a supply Agreement and not in the nature of any operational debt in default and hence, no Section 9 Application could have been allowed and CIRP could not have been initiated against the Corporate Debtor.

17. For any debt qua which Corporate Insolvency Resolution Process against a Corporate Debtor can be triggered, there has to be a cause of action amounting to claim arising out of either a contract between the parties or a claim in respect of provision of goods or services, which is non-existent in the present matter.

18. For initiation of proceedings in an Application filed under Section 9 of the Code, the issuance of a Demand Notice is sine qua non for admission of the Application. However, there is no Demand Notice issued by the Operational Creditor to the Corporate Debtor prior to the filing of the Application under Section 9 of the Code, and no proof of dispatch or delivery of the same has been made a part of the record. The Adjudicating Authority failed to consider the law laid down by this Hon'ble Appellate Tribunal in

**Abdos Polymers Limited vs. Callina Care Overseas Pvt. Ltd. in Company**

**Appeal (AT) (Ins) No. 788 of 2021** wherein this Hon'ble Appellate Tribunal, relying on findings of various High Courts and interpreting its own previous ratios has held as follows:

"8. As per Section 8 of the IBC, it is mandatory to "deliver" a demand notice of unpaid operation debt. Section 8 uses the word "deliver", which would mean that the Corporate Debtor has to ensure delivery of the notice on the Corporate Debtor....."

19. An Application under Section 9 of the Code must be accompanied by an affidavit to the effect that there is no notice given by the Corporate Debtor relating to a dispute of the unpaid operational debt. The Operational Creditor has deliberately suppressed the fact of pendency of disputes between the parties and hence, not placed on record any such affidavit by ill design.

20. The Adjudicating Authority failed to uphold the principles of natural justice and equity and proceeded ex-parte against the Corporate Debtor, without issuance of any appropriate notice to the Corporate Debtor. Hon'ble NCLT proceeded to decide the matter in unprecedented haste and hurry to decide the instant matter, by negating the same to be decided on merits. Hon'ble NCLT proceeded to decide the matter without the completion of pleadings and without extending sufficient opportunity to the Corporate Debtor to produce the complete facts and circumstances of the matter. The Operational Creditor did not serve the pleadings upon the Corporate Debtor and the proof of service appended with the Rejoinder filed by the Operational Creditor contains no attachment of any document being constituted as a proof of service.

21. The Operational Creditor has ventured to invoke the provisions of the Code as a means to recover the disputed amounts under a Contract of Supply and the Contract of Supply specifically contains an Arbitration Clause for settlement of disputes between the parties. However, instead of referring the dispute to Arbitration, the Operational Creditor has illegally proceeded to initiate the CIRP proceedings against the Corporate Debtor, in the case of pendency of disputes and non-ascertainment of debt.

22. Once the CIRP is commenced against the Corporate Debtor, the operations of the Corporate Debtor would be run to the ground. Any proposed CIRP will endanger and damage the confidence of the investors in the Corporate Debtor and further damage the finances of the Corporate Debtor. The operations of the Corporate Debtor pertain to farming, farm produce and soil based output. Any Resolution Professional appointed by the Hon'ble NCLT cannot perform any farming related work, and is averse to the hazards and nuances of such work. Further, such work is highly labour intensive and requires countless man hours on the fields and continuous negotiations with the farmers, which is not possible to be made by any professional appointed, other than the Appellant hereunder.

23. The initiation or continuation of the Corporate Insolvency Resolution Process (CIRP) against the Corporate Debtor would not lead to any maximization of value of the Corporate Debtor, and since the operations of the Corporate Debtor pertain to collection of farm produce across the states of Punjab and Haryana, the operations are highly interpersonal to the

Appellant, and cannot possibly be performed by any other person. Hence, the purpose of proceeding under the provisions of the Code is defeated. The initiation of the Corporate Insolvency Resolution Process (CIRP) against the Corporate Debtor has already impacted the seasonal work of the Corporate Debtor as collection of stubble and biomass is to be made during the months of September to November every year, without which, the operations of the Corporate Debtor would stand stifled.

24. The Banks/Financial Institutions have not filed any claim with the IRP against the Corporate Debtor and have verbally communicated to the Appellant their unwillingness to participate in the CIRP of the Corporate Debtor due to high costs and no maximization of value of the assets of the Corporate Debtor, and further due to the pendency of the OTS and the same being honoured by the Appellant on behalf of the Corporate Debtor.

25. The Adjudicating Authority committed an error to correctly take into contention the law laid down by the Hon'ble Supreme Court in **Macquarie Bank Limited vs. Shilpi Cable Technologies Ltd., (2018) 2 SCC 674**, wherein the Hon'ble Supreme Court has held that:

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13. When we come to Section 9(3)(b) it is obvious that an affidavit to the effect that there is no notice given by the corporate debtor relating to a dispute of the unpaid operational debt can only be in a situation where the corporate debtor has not, within the period of 10 days, sent the requisite notice by way of reply to the operational creditor.

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26. The Adjudicating Authority committed an error to correctly take into contention the law laid down by the Hon'ble Supreme Court in **Transmission Corporation of Andhra Pradesh Limited vs. Equipment Conductors and Cables Limited, (2019) 12 SCC 697**, wherein the Hon'ble Supreme Court has held that:

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10. From the aforesaid, it follows that existence of an undisputed debt is sine qua non of initiating CIRP. It also follows that the adjudicating authority shall satisfy itself that there is a debt payable and there is operational debt and the corporate debtor has not repaid the same.

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27. The Impugned does not take into consideration the law laid down by Hon'ble Supreme Court of India in **Mobilox Innovations Private Limited vs. Kirusa Software Private Limited, Civil Appeal No. 9597 of 2018**, wherein the Hon'ble Supreme Court has observed that IBC is not intended to be substitute to a recovery forum. It is also laid down that whenever there is existence of real dispute, the IBC provisions cannot be invoked. The relevant paragraphs are reproduced as follows:

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45. Going by the aforesaid test of "existence of a dispute", it is clear that without going into the merits of the dispute, the appellant has raised a plausible contention requiring further investigation which is not a patently feeble legal argument or an assertion of facts unsupported by evidence. The defense is not spurious, mere bluster, plainly frivolous or vexatious. A dispute does truly exist in fact between the parties, which may or may not ultimately succeed, and the Appellate Tribunal was wholly incorrect in characterizing the defense as vague, got-up and motivated to evade liability.

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28. Whilst passing the Impugned Order the Ld. Adjudicating Authority failed to consider the law laid down by the Hon'ble Supreme Court in **Innoventive Industries Limited vs. ICICI Bank and Limited, (2018) 1 SCC 407** wherein this Hon'ble Appellate Authority has held as follows:

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29. The scheme of Section 7 stands in contrast with the scheme under Section 8 where an operational creditor is, on the occurrence of a default, to first deliver a demand notice of the unpaid debt to the operational debtor in the manner provided in Section 8(1) of the Code. Under Section 8(2), the corporate debtor can, within a period of 10 days of receipt of the demand notice or copy of the invoice mentioned in sub-section (1), bring to the notice of the operational creditor the existence of a dispute or the record of the pendency of a suit or arbitration proceedings, which is pre-existing – i.e. before such notice or invoice was received by the corporate debtor. The moment there is existence of such a dispute, the operational creditor gets out of the clutches of the Code.

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### **Submissions of Respondent**

29. This Appeal is filed **by Sh. Sukhbir Singh as Director & Shareholder of Farm2energy Pvt. Ltd.**, whereas after the acceptance of Application bearing No. CP (IB) No. 80/CHD/PB/20203 by Hon'ble National Company Law Tribunal Chandigarh Bench on 09.09.2024, CIRP has commenced. After the commencement of CIRP, Sh. Sukhbir Singh has got no authority or power to file Appeal as Director and Shareholder because his rights as Directors have been Suspended and as Shareholder, he has no locus to file appeal under Section 61 of IBC.

30. That Appellant has produced some emails which were not part of any pleading earlier before Hon'ble National Company Law Tribunal. It is settled that new facts can't be pleaded at Appellant Stage without Permission. These emails are produced without any Affidavit/Certificate in terms of Section 63 of Bhartiya Sakshya Adhiniyam, 2023 and hence can't be relied upon.

31. Corporate Debtor did not make complete supply and tenure of the Agreement also expired on 15th December 2022, and supplies against the Advance of ₹1,19,53,864/- (Rupees One Crores Nineteen Lacs Fifty-Three Thousand Eight Hundred Sixty Four Only) have not been made, the aforesaid amount is being illegally retained by the Corporate Debtor and same is duly acknowledged by Corporate Debtor vide its Emails.

32. The Operational Creditor served a demand notice under the Insolvency and Bankruptcy Code 2016 upon the Corporate Debtor, seeking refund of payment/advance amount due in the prescribed format which has been duly received by the Corporate Debtor as well. A true copy of the statutory demand notice in terms of Section 8 of IBC, 2016 dated 17.01.2023 which was duly delivered on 19.01.2023 and thus, stands served upon the Corporate Debtor.

33. It is a matter of record that for the period 19.01.2022 till 29.01.2022 (10 days statutory period), the Corporate Debtor did not raise any objection as regards the claim of the Operational Creditor. The Operational Creditor did not receive any notice of dispute during the statutory period of 10 days of the demand notice dated 17.01.2023 duly served on 19.01.2023 and neither it has received any amount as claimed in the statutory notice.

34. It is contended that Appeal filed by Appellant may kindly be dismissed in the interest of Justice and Fair play as its is devoid of any merit.

**Submissions of RP**

35. RP in the present matter has placed the status report in the CIRP proceedings noted herein under.

36. Current Status of CIRP

- CIRP period validly extended. Exclusion Application is in the process of being filed.
- Assets and records still not handed over, Section; Section 19(2) application pending.
- Only one creditor (OC Verbio India Pvt. Ltd.) in CoC with 100% voting rights.
- No resolution plans invited/considered, in compliance with NCLAT order.
- Settlement attempt initiated by suspended director was not acceptable to the sole creditor.

37. RP brings to our notice that:

- CIRP progress has been hampered due to deliberate non-cooperation by suspended directors and statutory auditors.
- RP has taken all necessary steps: issued notices, conducted inspections, obtained ROC information, filed Section 19(2) application, and obtained CIRP extension.

- CIRP is continuing under judicial supervision; no Resolution Plan has been considered in compliance with NCLAT's restraint order.
- Exclusion of period lost due to non-cooperation is being sought before NCLT.

### **Appraisal**

38. We have heard counsels of both sides and perused the material placed on record.

39. Basis the material placed on record, we find that the main issue before us is whether Section 9 is maintainable in the facts and circumstances of the case.

40. Respondent No.1/Operational Creditor – Verbio India Private Limited had entered into an agreement with the Corporate Debtor – Farm2energy Private Limited for supply of Paddy Biomass. The agreement was accompanied by a Deed of Hypothecation of goods executed by the Corporate Debtor. The total consideration agreed between the parties was ₹4,40,00,000/- for the supply of 20,000 tons of Biomass Bales. The Operational Creditor paid an advance of ₹1,19,53,864/- to the Corporate Debtor. Despite the advance, the Corporate Debtor supplied goods worth only ₹34,46,1361/.

41. The Respondent No.1/Operational Creditor issued a legal notice to the Corporate Debtor for ₹1,19,53,864/- and later on followed by a statutory demand notice dated 17.01.2023 under Section 8 of the Code. The date of

default as mentioned in para 4 of the petition is 16.01.2022. The Operational Creditor also filed an Affidavit confirming that the Section 8 demand notice was served upon the Operational Creditor.

42. The Corporate Debtor in its reply before the Adjudicating Authority had submitted that the Operational Creditor intentionally denied to accept some of the Biomass Bales. Initially, the Operational Creditor accepted 5 to 6 trollies of Biomass Bales in a selective mode and rejected most of the supply on the basis of the grading linked to moisture. However, the Operational Creditor accepted the bales which are prepared from its own equipment. It is also claimed that the Corporate Debtor tried to contact the Operational Creditor physically and through email to accept the grievance of the Corporate Debtor. It is further claimed that the Corporate Debtor received an advance of ₹1,54,00,000/-, out of total agreement of ₹4.4 crores. It is claimed by the Corporate Debtor that it did a work of ₹2.2 Crores as it supplied 10,000 tonnes of biomass bales, at the centre of the Operational Creditor. This means that the Operational Creditor is liable to be paid balance ₹66,00,000.

43. The Adjudicating Authority has come to the conclusion that the Corporate Debtor has failed to pay back the outstanding amount due as mentioned in the statutory notice till date. Thus, the conditions under Section 9 of the Code stand satisfied. The liability of the Corporate Debtor was undisputed. Accordingly, the petitioner proved the debt and the default, and which is above the threshold limit. In view of the satisfaction of the conditions provided for in Section 9(5)(i) of the Code, the petition for initiation

of the CIR Process in the case of the Corporate Debtor, Farm2energy Private Limited was admitted.

44. We note a preliminary objection of the Respondent that the Appellant Mr. Sukhbir Singh has filed this appeal as Director and Shareholder, which is non-maintainable. The Appellant has corrected the memo of parties on 31.01.2026, which is placed on record. Even though it is belated correction, we allow that and we proceed to decide on the merits of the case.

45. Respondent No.1/Operational Creditor brings to our notice that the tenure of the supply agreement was from 15.09.2022 till 15.12.2022. As per the agreement the Corporate Debtor was entitled to receive 35% of the total consideration of the contract as advance payment for the same and the balance 65% was payable against the supply made by Corporate Debtors. The Operational Creditor – Respondent paid an advance of ₹77,00,000/- to the Corporate Debtor on 20.07.2022 and another advance of ₹77,00,000/- on 18.08.2022. To secure the advance made, both parties the Operational Creditor – Respondent executed Deed of Hypothecation dated 15.07.2022 for Hypothecation of movable equipment and assets during the tenure of the supply contract.

46. Respondent No.1/Operational Creditor has also denied that it adopted a selective mode to accept goods which were supplied by the Corporate Debtor – Rather the Operational Creditor adopted the process in accordance with the agreement in accepting the goods supplied by the Corporate Debtor. It brings to our notice that the Corporate Debtor could supply goods worth only

₹34,46,136/- and that too after much delay. The OC had issued the legal notice followed by a statutory demand notice.

47. On the claim of the Corporate Debtor that they supplied goods worth ₹2.2 Crores, we observe that the Corporate Debtor has not produced any bill to claim that it made supply of biomass sales worth ₹2.2 Crores.

48. In the facts and circumstances of the case, we observe that the statutory demand notice in terms of Section 8 under of the Code, which was dated 17.01.2023, was duly delivered on 19.01.2023. On the other hand, the appellant has raised an objection that an application under Section 9 of the Code must be accompanied by an affidavit to the effect and issuance of a Demand Notice is sine qua non for admission of the Application and it is missing in this case. Vehemently opposing such an argument being made at the Appellate stage, Respondent No.1 brings to our notice that it was duly served. Proof of service of the notice under Section 8 of the Code read with Rule 5 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules 2016 was duly filed before the Adjudicating Authority and was part and parcel of the court file in CP (IB) No. 80/CHD/PB/2023. Respondent No.1 has brought these facts before us in IA No. 1596 of 2026 in its affidavit of 24 February 2026. In these facts and circumstances, we are satisfied with the proof of service and we reject the arguments canvassed by the Appellant of non-service. Furthermore, Appellant's reliance on judgments on this count [**Abdos Polymers Limited (supra)**] are also found to be of no avail to it.

49. A related contention of the Corporate Debtor that the proceedings were initiated ex-party with an order dated 10.06.2024 and were against the principles of natural justice and equity is also ill-founded as the Corporate Debtor chose not to participate in the proceedings. The Corporate Debtor filed its reply and written statement and at the stage of the hearing did not participate. In such a situation the Adjudicating Authority cannot be faulted for not giving an opportunity. Sufficient opportunities were given to the Appellant but it did not avail of those opportunities. Therefore, the contention that the Adjudicating Authority has not upheld the principles of natural justice and equity is ill-founded and is misplaced. Even otherwise the Adjudicating Authority has gone through the reply and the written statement, which is placed on record, and also we have we gone through the merits of the case at the appellate stage and find there is no merit and the contention of the appellant is dismissed.

50. We find that the Corporate Debtor did not raise any objection as regards the claim of the Operational Creditor. The Operational Creditor also did not receive any notice of dispute during the statutory period of 10 days of the demand notice dated 17.01.2023. It is brought to our notice by the Operational Creditor that at the Appellate stage, Appellant is raising vague and unsubstantiated contention regarding service of the demand notice to evade its responsibility.

51. The Appellant has placed on record email exchange between the Corporate Debtor and the Operational Creditor without placing it before the

Adjudicating Authority, which is placed at page 138 to 153. The Appellant claims that there is a pre-existing dispute which is established by these emails. We have gone through these emails. We do not find any pre-existing dispute except for the admission by Mr. Nitin Jain from Farm2energy Private Limited, which states as follows:

“From: Nitin Jain <reynitin@gmail.com>

Sent: Tuesday, December 27, 2022 11:30:25 PM

To: Ashish Kumar <Ashish.Kumar@verbio.in>

Cc: Govind Singh Bhandari <Govind. Bhandari@verbio.in>; Sukhbir Singh Dhallwal <farm2energy@gmail.com>

Subject: Re: Solution proposed regarding Paddy Straw Collection Issue - Farm2Energy

Dear Ashish,

With regards to the trail email, we would like to update you that we are working on arranging funds i.e. the differential amount to be paid back after adjusting the material supplied to your organization from the amount received as an advance. Whatever the situation happened during the collection period & as mentioned earlier in the trail emails we are very clear that we have to settle your account by returning the pending amount.

To close it smoothly, we have found 2-3 small buyers for the remaining material and material shifting will start after the 1st week of Jan 2023. The delay is due to fog. Fast movement of material will start happening only after 15th Jan 2023.

Also, we are arranging funds from other sources and found that a major share of funds will start coming from January End of 2023 onwards. So, we will be able to clear the Verbio India Pvt Ltd account by the closure of the current financial year i.e. by 31st March 2023.

And as discussed we can revise the deadline of the agreement signed between us to 31st Mar 2023 from 31st Dec 2022.”

52. The above emails shows that the Appellant was in correspondence with the Respondent and accepted its liability and has informed the Respondent that it will be able to clear the dues by the end of the Financial Year i.e. 31.03.2023. There is not an iota of pre-existing dispute which could be evident from these emails. Even though we should not have accepted these emails at this appellate stage, but these emails in any case do not help the case of the Appellant. We thus find that the arguments canvassed by the appellant that there is a pre-existing dispute is baseless. Appellant's reliance on the judgment of Hon'ble Supreme Court of India in **Mobilox Innovations Private Limited (Supra)** will not be of any assistance to the Appellant.

53. The Appellant/Corporate Debtor contends that it is not a Corporate Debtor in terms of the provisions of the Code, as the alleged debt owed to the Operational Creditor did not fall within the definition of operational debt in terms of Section 5(d)(f) of the Code. We find such an argument to be contrary to the facts and circumstances of the case. As noted here in earlier, the Appellant in its email has admitted the debt and sought time to settle it. In such a situation, the arguments canvassed by the Appellant are not sustainable, and accordingly, such an argument is rejected.

54. The Appellant has also canvassed another argument that the alleged debt owed by the Corporate Debtor was pursuant to a supply agreement and not in the nature of any operational debt in default, and hence no Section 9

application could have been allowed. The Appellant also claims that there was a contract between the Appellant and the Respondent No.1. Since there was a breach of the contract, the Respondent was not having any right for the payment. At best it can seek damages for specific performance. We find such an argument to be unsustainable for the reason that an advance was provided to the Corporate Debtor for supply of goods, but it did not supply the full quantity of goods, for which the advance was provided. When the money was asked to be returned, it could not make payment, and therefore the Section 9 proceedings were initiated. The Operational Creditor filed a claim against the Corporate Debtor, and therefore Section 9 could very well be initiated. We do not find any infirmity in the order of the Adjudicating Authority in accepting such a petition.

55. Another argument presented by the Appellant that the initiation or continuation of the Corporate Insolvency Resolution Process (CIRP) against the Corporate Debtor would not lead to any maximization of value of the Corporate Debtor, since the operations of the Corporate Debtor pertain to collection of farm produce across the states of Punjab and Haryana, the operations are highly interpersonal to the Appellant, and cannot possibly be performed by any other person. Hence, the purpose of proceeding under the provisions of the Code is defeated. We find such an argument to be completely baseless. The Code prescribes the existence of debt and default, and if the above is established and there is no pre-existing dispute, then the Adjudicating Authority doesn't have to go beyond that and therefore such an argument is totally untenable.

56. Another argument of the Appellant that the banks/financial institutions have not filed any claim in the CIR proceedings against the Corporate Debtor doesn't provide any assistance to the Appellant for not taking up CIR proceedings.

57. In the facts and circumstances of the case, the judgments cited by the Appellant in the matters of **Macquarie Bank Limited (supra)**, **Transmission Corporation of Andhra Pradesh Limited (supra)** and **Mobilox Innovations Private Limited (supra)** do not provide any assistance to the Appellant.

58. We have gone through the contentions of both sides. We find that the debt and default are clearly established there is no pre-existing dispute.

### **Conclusions**

59. The Appellant has failed to establish a pre-existing dispute basis these emails. Otherwise, debt and default are accepted and therefore we do not find any infirmity in the order of the Adjudicating Authority.

### **Order**

60. We dismiss the Appeal. All IAs are also disposed of. It is brought to our notice that the Appellant is not cooperating in the CIR Proceeding. In this appeal vide order dated 06.02.2025, we had directed that “no resolution plan shall be considered without the leave of this Tribunal”. This interim order automatically stands vacated. We further make it clear that our interim direction was a very limited one and, in any case, with the final order the Appellant is duty bound to provide assistance to the RP. RP should continue

with the CIR Proceeding. The Appellant should provide assistance to the RP in the conduct of the CIRP.

**[Justice N. Seshasayee]**  
**Member (Judicial)**

**[Arun Baroka]**  
**Member (Technical)**

**[Indevar Pandey]**  
**Member (Technical)**

**New Delhi.**  
**July 06, 2026.**

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