
(2026) 06 NCLAT CK 0778

In the National Company Law Appellate Tribunal, Pricipal Bench, New Delhi

Case No : Company Appeal (AT) (Insolvency) No. 1833 of 2025

Abhishek Singh

APPELLANT

Vs

Rajaram Foods Products India Ltd.

RESPONDENT

Date of Decision : 30-06-2026

Acts Referred:

Insolvency and Bankruptcy Code, 2016 — Section 61, 9, 8, 4, 9(5)(i)(d), 8(2), 9(1), 9(5)(ii), 9(5)(ii)(d), 9(5), 14, 14(1)(a), 7
CrPC — Section 160
Negotiable Instruments Act — Section 138
GST Act
Arbitration Act — Section 37

Citation : (2026) 06 NCLAT CK 0778

Hon'ble Judges : Ashok Bhushan, Chairperson; Barun Mitra, Member (Technical)

Bench : Division Bench

Advocate : For Appellant : Mr. Abhijeet Sinha, Sr. Adv. with Mr. Gaurav Mitra, Mr. Himanshu Satija, Mr. Anshul Rao, Adv; For Respondents : Mr. T. Ravichandran, Varshini K., E. Rasi, KV Balakrishnan, Devesh Khandurj, Adv. for R3; Mr. Vaibhav Gagar, Ritwika Nanda, Adv. for R1

Final Decision : Allowed

Judgement

(Hybrid Mode)

Per: Barun Mitra, Member (Technical)

Present is a set of two appeals which have been filed by a common Corporate Debtor against two separate orders passed by the Adjudicating Authority, by which orders, two separate Section 9 petitions filed by two different Operational Creditors have been admitted by the Adjudicating Authority. The first appeal vide Company Appeal No. 1833 of 2025 filed under Section 61 of the Insolvency and Bankruptcy Code, 2016 ('IBC' in short) by the Appellant arises out of the Order dated 19.11.2025 (hereinafter referred to as the '**Impugned Order**') passed by the Adjudicating Authority (National Company Law Tribunal, Ahmedabad Bench-

I) in CP(IB) 595/9/(AHM) 2019. By the said impugned order, the Adjudicating Authority has admitted the application filed under Section 9 of the IBC by Rajaram Food Products India Ltd.-Operational Creditor admitting the Corporate Debtor into the rigours of Corporate Insolvency Resolution Process ('CIRP' in short). Aggrieved by the impugned order, the first appeal has been preferred by the Appellant-Corporate Debtor. The second appeal vide Company Appeal No. 105 of 2026 has been filed under Section 61 of IBC by the Appellant arises out of the order dated 12.01.2026 (hereinafter referred to as the "**Second Impugned Order**") passed by the Adjudicating Authority (National Company Law Tribunal, Ahmedabad) in CP(IB) 812 of 2019 read with IA/953(AHM)2025 and IA/1184 (AHM)2025. By the said impugned order, the Adjudicating Authority has admitted the application filed under Section 9 of the IBC by Tetra-Pak India Pvt. Ltd.-Operational Creditor admitting the Corporate Debtor into the rigours of CIRP. Aggrieved by the second impugned order, this appeal has been preferred by the Appellant-suspended management of the Corporate Debtor.

2. We propose to deal first with Company Appeal No 1833 of 2025. Coming to the brief factual matrix of the present case at hand, the Corporate Debtor-Manpasand Beverages Ltd had entered into a business transaction with the earlier entity of Respondent-Operational Creditor (by the name of Capricorn Food Products India Limited) and issued them purchase orders basis which orders the Operational Creditor supplied mango and guava pulp to the Corporate Debtor. In turn, the Operational Creditor issued invoices and against invoices which pertained to the period 21.03.2018 to 25.03.2019, a principal amount of Rs. 4.44 Cr was purportedly was claimed by the Operational Creditor to have remained outstanding for payment by the Corporate Debtor. On not receiving the outstanding payment, the Operational Creditor on 08.06.2019 issued a statutory Demand Notice under Section 8 of IBC upon the Appellant-Corporate Debtor to clear the outstanding payment. In response, the Appellant sent their reply to the Demand Notice on 13.06.2019. However, on still not receiving any further payment, the Operational Creditor filed Section 9 petition before the Adjudicating Authority on 17.07.2019. The Adjudicating Authority disposed of the Section 9 petition as infructuous on 09.03.2021 since the Corporate Debtor had been admitted into CIRP on the basis of a Section 9 petition filed by another Operational Creditor. In the meantime, the CIRP was initiated against the earlier entity-Capricorn Food and on approval of the resolution plan, the Successful Resolution Applicant, which is now the present Respondent, took over the management of the Respondent Company. However, the present Operational Creditor had sought restoration of their Section 9 petition which came to be allowed by the Adjudicating Authority which after due consideration finally admitted the Section 9 petition initiating CIRP of the Corporate Debtor vide impugned order of 19.11.2025. Aggrieved by the impugned order, the present appeal has been preferred by the Corporate Debtor.

3. Making submissions on behalf of the Appellant, Shri Abhijeet Sinha, Ld. Sr. Counsel for the Appellant, submitted that the Adjudicating Authority had

admitted the Section 9 petition erroneously without any independent determination of the essential jurisdictional facts of debt, default and dispute by relying on the invoices, delivery challans, and ledger entries produced by the Operational Creditor which were not genuine. It is the contention of the Corporate Debtor that in the ledger statement of the Operational Creditor there is clear evidence of 80 entries of payments received by the Operational Creditor from the Corporate Debtor during the period 26.03.2018 and 30.03.2019 totalling Rs. 7.49 Cr. It was contended that when the Corporate Debtor had admittedly paid Rs. 7.49 Cr to the Operational Creditor during the same invoice window, the Operational Creditor cannot claim any incidence of default on the part of the Corporate Debtor, particularly so, when the account maintained between the two parties was in the nature of a running account and there were no instructions for specific appropriation done with respect to specific invoices. It was asserted that the statutory investigative findings of the GST department reveal that the alleged transactions between them were paper transactions based on bogus and fake invoices and no supply of goods by the Operational Creditor had actually taken place. In addition, it was asserted that the Operational Creditor had already written off their outstanding debt in the ledger account earlier, which factum had also been noticed by the CBI under Section 160 of CrPC and yet was now manipulating recovery of the written-off amount which further substantiates that there was no incidence of debt or any default on the part of the Corporate Debtor. It was also submitted that there was a history of long-standing pre-existing dispute between the parties regarding the quality, quantity and delivery of goods including short supply of goods, non-supply of goods, defective supply of goods including expired goods by the Operational Creditor. It was also pointed out that there were several contemporaneous documents during the period 2015 to 2019 which clearly demonstrate that the Appellant had been consistently disputing the operational debt. Submission was pressed by the Appellant that the Operational Creditor has failed to rebut the documentary records which clearly show fraudulent invoicing; write-off by the Operational Creditor of the alleged receivables in their own book of accounts; investigative findings of the GST showing fake and bogus invoices by the Operational Creditor and admissions thereto recorded by statutory authorities which conjointly establish pre-existing disputes. The Adjudicating Authority had therefore failed to apply the test of the ***Mobilox Innovations Pvt. Ltd. Vs. Kirusa Software Private Limited (2018) 1 SCC 353*** by ignoring the plausible contention of dispute and allegations of fraud which had been raised by the Corporate Debtor. The Adjudicating Authority had erroneously admitted the Section 9 petition though the transactions between the parties were riddled with genuine pre-existing disputes.

4. Refuting the contentions made by the Appellant, Shri T. Ravichandran, the Ld. Counsel for the Respondent submitted that it was factually incorrect on the part of the Appellant to contend that the Operational Creditor had not actually supplied goods to the Corporate Debtor. To the contrary, stocks were actually

supplied to the Corporate Debtor for which purpose the goods had been physically moved by Capricorn Foods to the Corporate Debtor. Towards payment for such supply of goods, the Corporate Debtor had also paid cheques to the Operational Creditor which bounced leading to the filing of Section 138 petition under the Negotiable Instruments Act. It was submitted that the claim made by the Operational Creditor in Part 'IV' in the Section 9 application is Rs. 4.44 Cr towards principal amount and an interest amount of Rs. 61.72 lakhs for invoices for the period 21.03.2018 to 25.03.2019 aggregating to a total operational debt of Rs. 5.05 Cr. Moreover, as the Corporate Debtor had failed to pay the Operational Creditor the amount due towards the value of supply made along with tax payable, the GST authorities on noticing the violations committed under the GST Act passed recovery proceedings for Rs 8.21 lakhs as output tax liability. As regards communications/documents raising quality disputes by the Corporate Debtor also lacked substance since the purported emails/communications/minutes of meetings basis which quality issues/short-supply/non-supply/defective supply were raised pertained to invoices belonging to a period which do not correlate to the period of invoices against which the Section 9 petition had been filed and hence these documentary records were irrelevant. Furthermore, the reply to the Section 8 Demand Notice clearly showed admission of operational debt by the Corporate Debtor qua the Operational Creditor and no pre-existing dispute with regard to quality or quantity of goods was raised therein. It was further stated that the writing off of debt from the books of account was only an accounting entry which cannot disentitle or disempower any creditor to pursue recovery of the same debt and in support of their contention, reliance was placed on the judgment of the Hon'ble Supreme Court in **Salim Akbar Ali Nanji Vs UOI (2006) 5 SCC 302**.

5. We have heard the Ld. Counsel for both the parties and perused the records carefully.

6. The short point for our consideration is whether there was any discernible pre-existing dispute surrounding the operational debt claimed to be due and payable by the Corporate Debtor to the Operational Creditor which exceeded the threshold limit of Rs.1 Cr.

7. To come to our findings, we would like to be guided by the test which has been laid down by the Hon'ble Supreme Court in the seminal judgment of **Mobilox judgement supra** which test reads as follows:-

"25. Therefore, the adjudicating authority, when examining an application under Section 9 of the Act will have to determine:

(i) Whether there is an "operational debt" as defined exceeding Rs. 1 lakh? (See Section 4 of the Act)

(ii) Whether the documentary evidence furnished with the application shows that the aforesaid debt is due and payable and has not yet been paid? and

(iii) Whether there is existence of a dispute between the parties or the record of the pendency of a suit or arbitration proceeding filed before the receipt of the demand notice

of the unpaid operational debt in relation to such dispute?”

From a plain reading of the above judgment, it is clear that even if a debt above the threshold limit is due and payable but remains unpaid but such debt is found disputed, the Section 9 application would have to be rejected.

8. It is equally pertinent to notice that the above judgement also lays down that as long as a dispute is raised which is not a patently feeble argument or unsupported by evidence, the Adjudicating Authority has to reject the Section 9 application. The relevant excerpts of the judgment is as reproduced below:

“51. 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)(i)(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.

“56. 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.”

From a plain reading of the above judgment it is crystal-clear that what has to be looked into is whether the defence raises a dispute which needs further adjudication by a competent court or if there is an undisputed debt for which insolvency can be initiated against the Corporate Debtor. There is no need for the Adjudicating Authority to enter into final adjudication with regard to existence of dispute between the parties regarding operational debt but sufficient to reject a Section 9 application if the nature of dispute raised is such that it requires adjudication by a competent court.

9. Coming to the statutory construct of the IBC, Section 8 of the IBC envisages that the Operational Creditor, on occurrence of a default by the Corporate Debtor, is required to deliver a Demand Notice in respect of the outstanding Operational Debt. Section 8(2) lays down that the Corporate Debtor within a period of 10 days of the receipt of the Demand Notice would have to bring to the notice of the Operational Creditor, the existence of dispute, if any. Subsequent to issue of demand notice by the Operational Creditor, in terms of Section 9(1), if the

Operational Creditor does not receive payment from the Corporate Debtor or does not receive notice of dispute under Section 8(2), he may file an application under Section 9(1) while Section 9(5)(ii) of the IBC contemplates rejection of Section 9 application in certain circumstances and Section 9(5)(ii)(d) contemplates rejection when notice of dispute has been received by the Operational Creditor or there is a record of dispute in the information utility. Thus, it goes without saying that the Adjudicating Authority is required to follow the mandate prescribed in Section 9(5) of the IBC to admit or reject the Section 9 application, as the case may be.

10. Having noted the legal propositions delineated in the ***Mobilox judgement*** with regard to test that has to be applied in deciding the admission or rejection of a Section 9 application and also the contours of Sections 8 and 9 of IBC, we now propose to answer whether in the present factual matrix there is pre-existing dispute surrounding the operational debt and when seen from this perspective, whether the impugned order passed by the Adjudicating Authority admitting the Section 9 application is sustainable in the eyes of law.

11. It is the case of the Appellant that merely because the Operational Creditor had raised invoices and shown ledger entries, that was not sufficient to establish operational debt under Section 9 of the IBC. There is specific documentary evidence founded on contemporaneous documents, statutory findings and admitted communications placed on record which show that the debt claimed by the Operational Creditor was riddled with pre-existing disputes. The Adjudicating Authority had failed to appreciate that once genuine, pre-existing disputes are raised qua the operational debt, Section 9 petition has to be non-suited.

12. Per contra, it is the contention of the Operational Creditor that the contemporaneous email correspondence and other communications regarding the non-supply/short supply of goods including quality issues of the goods supplied basis which the Corporate Debtor has purportedly claimed evidence of disputes are self-serving documents. Moreover, these communications were not even properly addressed to the Operational Creditor and therefore clearly fails to establish any pre-existing dispute. Even these emails pertained to the period which did not co-relate with the invoices which constituted the subject matter of the Section 9 application.

13. To begin our analysis of the facts at hand, we first come to the supply related disputes which were purportedly brought to the notice of the Operational Creditor by the Appellant. It will be useful to peruse some of the contemporaneous emails/documents exchanged between them which according to the Corporate Debtor establish pre-existing disputes. The first set of the sample emails manifesting dispute is as under:

From: Shriram Raisaldar (mailto:shriram.raisaldar@manpasand.co.in)

Sent: 14 October 2017 17:56 To: lalit.parashar Cc: 'DHIRAJ KUMAR'; pawankmishra111@gmail.com; Rakesh Singh; 'Vijay Panchal'; mahesh.chauhan

Subject: Approval for destruction of Puffed/Leaked pulp drums at Varanasi Plant

Dear Lalit, Following are the details of rejected pulp lying at Varanasi plant, kindly get the approval for destruction.

From: Tanmay(mailto:tanmay.shah@manpasand.co.in)

Sent: 16 October 2017 5:15 PM To: 'Sales-Fairoze' <sales@capricorngroup.com>; Shaifali Bansal <shaifali.bansal@capricorngroup.com> Cc: 'Vijay Panchal' <vijay.panchal1@icloud.com>; Lalit Parashar <lalit.parashar@manpasand.co.in>; 'qc' <qc@manpasand.co.in>; Rakesh Singh <rakesh.singh@manpasand.co.in> Subject: Capricorn Puffed/Leaked Pulp drums at Varanasi plant Dear Sir/Madam, Please see Below mail and We issue Debit note against the material.

Thanks Tanmay Shah (Emphasis supplied) This email signifies the fact that there was a background of pulp leaking and their rejection including issue of corresponding debit notes.

14. The next set of email and attachment thereto leading to corresponding debit notes to which our attention has been adverted to is as follows:

From: NITESH SHARMA <niteshashu73@gmail.com> Date: Fri, Jun 19, 2015, 12:15 Subject: CAPRICORN FOODS PRODUCTS INDIA PVT LTD

REJECTION LETTAR

To: mahesh chauhan <maheshchauhan56@gmail.com>, <mahesh.chauhan@manpasand.co.in> Cc: <ashok pandey@manpasand.co.in>, Vijay Panchal <vijay.panchal@manpasand.co.in>

PLZ FIND THE ATTACHED FILE

THANKS & REGARDS

NITESH KUMAR SHARMA

Manpasand Beverages Pvt Ltd Attachment to email of 19.06.2015

DATE-02-06-2015 This is to certify that 1000 cartons of tmp supplied by m/s Capricorn food Products India Ltd vide inv no-560 dated-31-03-2015 and I.r no-1773 date-03-04-2015 form-38 no-1719672 were rejected on quality reasons.

Our debit note no-02 dt-09-06-2015 issued towards return of goods.

(Emphasis supplied)

15. There were disputes between the two parties even on the supply of goods and expiry of shelf-life.

From: ashok.pandey <ashok.pandey@manpasand.co.in> Sent: 14 February 2019 12:43 To:sales@capricorngroup.com Subject: Quality issue with tmp drums.

Dear sir, We have get complain from our QC dept. that time to time they are getting qualityissue with TMP drums (BLAKISH)..... Manpasand Beverages Limited From: Fairoze Khan Sent: Thu, 14 Feb 2019 18:13:23 +0530 To: ashok.pandey Subject: RE: Quality issue with tmp drums.

Dear Ashok Ji, The below mentioned batches are relevant to crop 2017 TMP, which was supplied to you in March 2018 which is almost 1 year back. Also the below mentioned batches declared shelf life is 18 Months, as per this the material has expired in month of November and December 2018 itself. Please find the below production and Expiry dates of the batches for your reference.

Batch code	Production Date	Expiry Date
7TMP09E007	24.05.2017	23.11.2018
7TMP09E011	08.06.2017	07.12.2018
7TMP096017	31.05.2017	29.11.2018

The material should have been used before the Expiry, since it is expired material we cannot accept or evaluate any quality complaint against the same.

Fairoze Khan (Emphasis supplied)

16. Email has also been placed on record of 12.03.2019 which has specifically recorded that the goods were not dispatched to certain locations despite issue of purchase orders as placed below:

To: Amt Rawal; Fairoze Khan Cc. 'Vijay Panchal'; ashok.pandey; rahul.bhatt; store.ambala; pawan. mishra; store; sales Subject: RE: DISPATCH DETAILS. Dear Amit Ji, We have dispatched only 46.01 MT for Ambala... There was no dispatch for Varanasi and Vadodara... So please plan accordingly.. As discussed please courier the cheque to Head Office Address at earliest....

(Emphasis supplied)

17. When we look at the emails, it cannot be denied that these emails were contemporaneous in nature and had been exchanged directly by the Corporate Debtor with the Respondent-Operational Creditor. The tone and the tenor of the email clearly evidence disputes as they relate to defective material, quality issues, short supply of goods, discrepancies in despatch of goods, rate discrepancies including rejection of consignments. These communications fall within the invoice period for which operational debt has been claimed by the Respondent-Operational Creditor. These emails conclusively establish that there existed serious disputes regarding quality, quantity, and supply of goods much prior to the issue of Section 8 Demand Notice. We are therefore not persuaded

by the plea taken by the Operational Creditor that these emails and communications were self-serving emails.

18. Further, when we look at the minutes of the meeting of 10.02.2017 where the representatives of both parties were present, we find that the minutes clearly record the rejection of material supplied by the Operational Creditor on account of quality issues. The minutes as recorded are as reproduced below:

Date: 10th Feb 2017 Minutes of Meeting Capricorn Representative Mr. Dinkar Mahajan Visited Varanasi Unit to resolve the 'Quality Hold Issue of TMP Batch no 06TMP09A001 manufacture date 08.06.16. Shown earlier Two cut drum which were kept in Cold store Observed Lumps. Taken Another two drums from Hold Vehicle. & Opened in front of Capricorn representative & AM (Manpasand Beverages, Varanasi) Quality Executive & Batch Blending Operator (Manpasand Beverages Ltd. Varanasi) found Lumps in both drums.(Color & Taste found satisfactory)..Being Lumps visible in drum cannot be use for Beverage Blending. Now hence this vehicle will be rejected on the basis of Quality issue.

Second Vehicle Batch no. 06TMP09A002 Manufacture date 09.06.16 Also Observed LUIVIPS

Further Action will be decided by Purchase Department Head of HO Manpasand Beverages Ltd. & Sales Head of M/S Capricorn.

- 1) Mr. Dinkar Mahajan (Capricorn representative) (Signed)*
- 2) Mr. S.N.Josh (QAM Manpasand Beverages Ltd varanasi) (Signed)*
- 3) Mr. Rakesh Singh (Quality Executive, Manpasand Beverages Ltd. Varanasi (Signed)*
- 4) Mr. Pawan Mishra (Store In Charge Manpasand. Beverages Ltd. Varanasi)*

Plant Head Varanasi unit Mr. Mahesh Chauhan (Signed)

On looking at the above minutes, it is clear that the minutes of the meeting are found to signed by the representatives of the Operational Creditor wherein the alleged operational debt has been disputed on quality issues.

19. It is clear from the above contemporaneous emails and meeting minutes which clearly demonstrates that the Appellant had been consistently disputing the operational debt. The contention of the Operational Creditor that the dispute has been raised regarding quality of goods and supply of goods as an after-thought after the Section 9 petition was restored in 2025 is found to be factually incorrect. The finding returned by the Adjudicating Authority that none of these communications were ever sent or copied to the Operational Creditor also stands belied when material placed on record is perused. It is settled law that for purposes of Section 9 proceedings, all that the Adjudicating Authority is required to ascertain is whether there existed a plausible contention or a plausible dispute

which requires investigation and not whether the defence raised would ultimately succeed on merits. The documentary material which has been placed on record clearly satisfies the threshold test of pre-existing dispute and therefore the Section 9 petition was liable to be rejected at the threshold.

20. We next come to the contention of the Appellant that the GST investigation findings and the statements recorded by officers of the Operational Creditor before the GST Authorities clearly found that the transactions basis which Operational Creditor was claiming the operational debt was sham and fabricated. This is further buttressed by the fact that the Operational Creditor had voluntarily reversed and paid an amount of Rs. 1.54 Cr towards wrongful availment of input tax credit. Such reversal of payment of input tax credit by itself constitutes a clear admission by conduct that the transactions were fraudulent in nature. In support of their contention that sham and collusive transactions cannot constitute valid debt under the IBC, attention was adverted by the Corporate Debtor to the judgement of the Hon'ble Supreme Court in ***Phoenix ARC Pvt Ltd Vs Spade Financial Services Ltd. in Civil Appeal No. 2842 of 2020.***

21. Per contra, it is the case of the Operational Creditor that the statements which were recorded in the GST proceedings go to show that the goods had actually been supplied and qua these goods, payments still remain outstanding. It was vehemently contended that the Corporate Debtor has tried to rely selectively on the GST proceedings which are not relevant for the present insolvency proceedings. In any case, the GST findings cannot be relied upon, especially when such proceedings are already under challenge before the High Court of Gujarat.

22. At this stage, we may advert our attention to the GST proceedings as contained at para 2(x) of the CGST Order dated 28.01.2025 which appears at page 369 of Appeal Paper Book ('**APB**' in short) which are as extracted hereunder:

(x) M/s Capricorn Food Products India Ltd.: A statement dated 23.08.2019 was recorded of Shri C.Arugadas, Assistant manager of M/s Capricorn Food Products India Ltd wherein he interalia admitted that they have carried out mere paper transaction with respect to the purchase made from M/s Leon Food Products Private Ltd during March 2018 and March 2019 without actual supply of goods. Further, Shri Rahoul Jain, Managing Director of M/s Capricorn in his statement dated 04.10.2019 stated that that they had moved their recovery proceedings under NCLT against M/s MBL for the actual goods supplied which had physically moved and the payment of 4.41 Cr still remains unpaid in respect of Capricorn and they have also filed a case under section 138 for the cheques which were bounced. Further, he submitted details of invoices against which M/s MBL have not made payment to them. Further, Shri Rahoul Jain, in his statement dated 14.10.2019 admitted that M/s Capricorn, Chennai (GSTIN: 33FBCC1550BIZJ) had availed ITC on the strength of purchase invoices issued by M/s MBL, Haryana, M/s Nandhi Foods Products Pvt. Ltd. M/s Thairga Traders and others

without actual receipt of the goods.....

When this confession made by Shri Rahoul Jain in respect of M/s Capricorn is seen in light of statement made by Shri Bharat Rabari to the effect that one of the excel sheet obtained from USB Hard Disc name as "gongluagropvt" contains details RECEIPT and PAYMENTS to Gonglu and returned through M/s Nandhi Food Products, M/s Sri Srini Agro Industries, M/s Surabi Aspectic Food Product, M/s Amudhasurabi Fruit Industry, M/s Vijay Krishna Agro, M/s Leon Food Products P Ltd, it appears that above mentioned firm were used by M/s MBL to pass on ineligible ITC to first Capricorn and from there to M/s Gonglu which would ultimately pass on to M/s MBL. This is further corroborated by the fact that M/s. Capricorn Food Products India Limited had passed on ineligible ITC to M/s Gonglu Agro Private Limited for an taxable value of Rs.21,78,16,538/-, involving GST of Rs.2,61,37,985/- without supply of goods.

(Emphasis supplied)

23. We now also notice the investigation report of the GST dated 26.08.2019 as placed at page 467 of APB which specifically records the statements of C.

Arugadas who is an officer of the Operational Creditor which is extracted hereunder for easy reference:

Q.7 Please state the reason why there are no entries of goods received from M/s. Leon Food products private limited, Puttur are present in your inward register for the above said period?

Ans. The supplies shownby M/s. Leon Food products private limited, Puttur for the months of March 2018 and March-2019 to our unit M/s. Capricorn Food Products Limitedare mere paper transactions. Since, there is no actual supply of goods from M/s. Leon Food Products Private limited, Puttur to our unit, the entries of goods received has not been made in our inward register.

Q.8 Please elaborate what do you mean in stating- "no actual supply of goods from M/s. Leon Food Products Private limited, Puttur to our unit"

Ans. Based on our request and mutual understanding with M/s. Leon Food Products Private limited, Puttur, they have issued only supply invoices in the name of M/s. Capricorn Food Products Limited without any physical movement/ supply of goods. After issuance of supply invoices and making necessary entries in their accounts books the same are sent to us through courier to us to record the details in our account books.

Q.13 When the whole transactions are fictitious, please explain how you recover the amount paid by you to M/s. Leon Food products private limited, Puttur as stated above.

Ans. For the invoices raised by M/s. Leon Food Products Private limited to our unit, we have made the payment to them. In turn M/s. Leon Food Products Private limited had made the payment to Manpasand Group, who in turn paid the

amount to us, which we initially paid to M/s. Leon Food Products Private limited for the fake invoices.

The above statement of C.Arugadas clearly allude to circular invoicing arrangements and issuance of invoices without actual movement or supply of goods and that these transactions had been undertaken to avail input tax credit wrongfully.

24. However, when we look at the impugned order we find that the Adjudicating Authority has taken notice of the CGST investigation letters dated 28.06.2019, 26.08.2019 and 24.09.2019 and the statements of C.Arugadas and Rahoul Jain who are officers of the Operational Creditor but has held that these circular input tax credit fraud was relatable to other entities and that all invoices raised upon Corporate Debtor have not been held to be bogus or without actual supply of goods.

25. We are unable to agree with the above findings returned by the Adjudicating Authority. When we look at the above CGST findings, we find that there is ample evidence that the Operational Creditor and its officers have admitted fake paper transactions before the GST authorities. Thus, we find on the one hand admissions made by the own officers of the Operational Creditor which establish that the transactions were mere paper transactions unsupported by the actual movement of goods while on the other hand the Operational Creditor has taken a contradictory stand before this Adjudicating Authority that goods were actually supplied to the Corporate Debtor claiming genuine operational debt in existence. Having admitted paper transactions and having also reversed input tax credit, the Operational Creditor seeking to invoke the provisions of the IBC basis the very same transactions itself substantiates that there was a serious dispute between the parties. The plea taken by the Operational Creditor that the GST findings are not relevant because the GST proceedings have been challenged before the High Court of Gujarat does not cut much ice since in the present case the GST findings have admittedly not been set aside or stayed. We are of the considered opinion that in view of the summary jurisdiction of the Adjudicating Authority, in the face of such evidence of pre-existing dispute, the insolvency jurisdiction under the IBC could not have been invoked for recovery of disputed claims.

26. This brings us to another limb of pre-existing dispute raised by the Corporate Debtor in that the records of the Operational Creditor clearly show that the operational debt amount of Rs. 4.36 Cr claimed by them had been written off in their books of accounts which amount directly correspond to the invoices raised by the Operational Creditor and that this write-off has been confirmed by the CBI in its communication. The Operational Creditor was now trying to enforce the very receivables which had already been treated as withdrawn. It was asserted that a write-off is a clear acknowledgement that the amounts were irrecoverable by the Operational Creditor and that no operational doubt survived under Section 9 of the IBC.

27. Per contra, it is the contention of the Operational Creditor that even if the amounts had been written off, the same did not extinguish the right of the Operational Creditor to claim such amounts under the law as accounting entries cannot disentitle or disempower any creditor to pursue recovery of the same debt.

28. It will be useful to take notice of the notice issued under Section 160 of the CrPC by the CBI as placed at page 271 of APB as extracted hereunder:

Dated: 13.07.2023 NOTICE (U/s 160 Cr.PC)

To, M/s Manpasand Beverages Ltd Sub: Investigation of case in RC No. 07/E/2023/CBI/EOB/Chennai -M/s Capricorn Food Products India Ltd. (CFPIL) - Reg.

It is to inform that during the course of investigation of crime No. RC 07/E/2023/CBI/EOB/Chennai registered by CBI, EOB, Chennai against M/s Capricorn Food Products India Ltd. (CFPIL), it is observed that a sum of Rs 3,72,96,568/- and Rs 63,38,016/- was written off in the ledger account of M/s CFPIL against the amount receivable from your company for the Financial Year 31.03.2019 and 31.03.2020 respectively.....

Dy. Supdt. of Police CBI, EOB, Chennai (Emphasis supplied)

29. From the above material placed on record, it is clear that there was write-off made by the Operational Creditor which had been noticed during investigations by the CBI. When the alleged receivables had already been written off in the books of accounts of the Operational Creditor, it tantamount to treating the alleged dues as irrecoverable in their own financial records. In such circumstances, the Operational Creditor could not have subsequently invoked insolvency jurisdiction under Section 9 by alleging the same amount to be an undisputed operational debt. Even if we accept at face value that the write-off was a routine accounting adjustment as has been contended by the Operational Creditor, recovery of the same cannot be done by invoking Section 9 proceedings which is for the purpose of insolvency resolution and not for the purpose of debt-recovery proceedings. This order has erroneously not been taken into reckoning by the Adjudicating Authority. That the Adjudicating Authority chose to remain silent on this contention even after recording the CBI order at para 9.13 of the impugned order as it tantamount to being oblivious of an important facet of another pre-existing dispute which ought not to have been overlooked.

30. This brings us to the issue raised by the Operational Creditor that the reply of the Corporate Debtor to the Demand Notice constituted an admission of liability. Per contra it has been contended by the Corporate Debtor that in their reply to the Demand Notice sent to the Operational Creditor on 13.06.2019, it was clearly mentioned that liability, if any, would be payable subject to verification and reconciliation which did not amount to them having admitted any debt. It was emphatically asserted that a qualified and a conditional statement issued in the midst of investigation proceedings cannot be construed as an admission of debt.

31. We would like to have a look at the reply of the Corporate Debtor to the Section 8 Demand Notice which reads as under:

Sub: Reply to your notice legal Notice dated 08.06.2019 We acknowledge the receipt of your demand notice under the Insolvency and Bankruptcy Code, 2016 In reference to the same, we wish to state that due to GST Search and Seizure that has taken place at the Head office and other locations, the authorized person are taken in custody and we are unable to look into the matter as of now and hence we are not successful in settling the accounts.

You are therefore requested to co-operate till this matter ends. We shall conduct the meeting and settle the accounts, if any payable once the authorized person are available to meet.....

We await positive response from your end as good business relations and future business prospects and take back the legal notice.

(Emphasis supplied)

32. When we look at the impugned order, it has been held by the Adjudicating Authority that the reply constituted an unconditional acknowledgement of debt and that the Corporate Debtor had not only admitted outstanding liability but had "promised payment" after verification. We are of the considered view that it was misconstrued and misconceived on the part of the Adjudicating Authority to have held that the Corporate Debtor had made any promise of payment. All that the Corporate Debtor has mentioned in the reply to the section 8 notice was the extant situation wherein their records were inaccessible and their personnel in custody due to ongoing search-and-seizure proceedings being conducted by the GST. The reply further stated that they were unable to look into the matter of settling accounts and that reconciliation of accounts would be undertaken and accounts would be settled "if any payable." Use of the wordings, "if any payable" clearly showed that the liability was yet to be determined. Therefore, this reply cannot be treated as an unconditional and unequivocal acknowledgement of liability. Hence this communication itself constituted a notice of dispute within the meaning of Section 8(2) of the IBC.

33. When seen against the overall conspectus of facts and circumstances that the Corporate Debtor had been raising issues relating to supply of defective and expired goods, short supply/non-supply of goods and discrepancy in dispatches and rate-related issues coupled with the findings arising out of the GST and CBI investigation showing fake, bogus and sham paper transactions and circular transactions of input tax credit by both parties as well as the reply to the Section 8 Demand notice wherein the Corporate Debtor had only agreed to reconciliation of accounts which had not yet taken place, it is clear that the defence which was raised by the Corporate Debtor cannot be said to be moonshine. That pre-existing dispute was very much there is amply supported by material on the record. It is not the remit of IBC to investigate all related contractual disputes or look into their merits as long as it suffices that a plausible defence has been

raised as has been done in the present case.

34. In the present factual matrix, the defence raised by the Corporate Debtor cannot be held to be moonshine, spurious, hypothetical or illusory. And for such disputed amounts, Section 9 proceeding under IBC cannot be initiated at the instance of the Operational Creditor. In our considered view, the impugned order admitting the Section 9 petition therefore suffers from infirmities and deserves to be set aside.

35. We now propose to take up the second appeal for our consideration. Coming to the brief factual matrix of Company Appeal No. 105 of 2026, we find that the Adjudicating Authority vide second impugned order passed on 12.01.2026 had admitted the Section 9 petition filed by the Operational Creditor-Tetra-Pak India Pvt. Ltd. against the Corporate Debtor-Manpasand Beverages Ltd. on the grounds of debt and default. Aggrieved by this order, the present appeal has been preferred by the Appellant-Suspended Director of the Corporate Debtor.

36. It is the case of the Appellant that though the claim of the Operational Creditor stood fully discharged prior to the filing of Section 9 application, the Adjudicating Authority had wrongfully admitted the Section 9 application. It was also submitted that on the date of the passing of the second impugned order, the Corporate Debtor was already undergoing CIRP pursuant to the CIRP admission order dated 19.11.2025 passed by the Adjudicating Authority in Company Petition No. 595 of 2019 whereby moratorium under Section 14 of the IBC had already commenced and was continuing to operate. The second impugned order was thus passed by the Adjudicating Authority during the subsistence of an earlier CIRP admission order already operating against the same Corporate Debtor and though this factum had been specifically brought to the notice of the Adjudicating Authority, the latter without recording any consideration of the subsisting CIRP or the continuing operation of the Section 14 moratorium proceeded to hear and admit this subsequent Section 9 petition. Submission was pressed that IBC does not contemplate permitting parallel and overlapping CIRPs against the same Corporate Debtor and that admission of fresh CIRP during the subsistence of an existing CIRP was jurisdictionally impermissible, thus, striking at the root of the insolvency framework. Such admission during an existing CIRP and continuing moratorium was contended to be ex-facie without jurisdiction and contrary to settled position of insolvency law and therefore, liable to be set aside. It was also pointed out that once CIRP had commenced and moratorium had come into play, the suspended management of the Corporate Debtor ceased to have authority to represent the Corporate Debtor and could not have been made a party by the Respondent. It is also the case of the Corporate Debtor that there is a continuing pattern of repeated and coercive invocation of the insolvency mechanism against the Corporate Debtor which clearly demonstrated a systematic misuse of the IBC provisions by the Operational Creditors at a time when IBC was enacted for resolution of genuine insolvency and not as a mechanism for arm-twisting for recovery or for coercive settlement of disputed

claims.

37. Per contra, it is the case of the Respondent that the second impugned order had been rightly passed by the Adjudicating Authority since the CIRP admission order of the Corporate Debtor in Company Petition No. 595 of 2019 dated 19.11.2025 had been stayed vide order dated 24.11.2025 passed by this Appellate Tribunal in Company Appeal No. 1833 of 2025. This order of 19.11.2025 had put the moratorium in abeyance, hence, the Adjudicating Authority could always have adjudicated on the Section 9 application filed by the Operational Creditor. Furthermore, the IRP had not taken charge and control of the Corporate Debtor and the previous management of the Corporate Debtor had continued to run and manage the functioning of the Corporate Debtor as if no CIRP admission order had been passed. Thus, the character of 'proceedings *in rem*' was not triggered in view of the interim stay order dated 24.11.2025 of this Appellate Tribunal and the proceedings continued to be in *personam*. While admitting that the Hon'ble Apex Court and this Tribunal have held that proceedings are *in rem* following a CIRP admission order, however, it was contended that *in rem* proceedings arise only when the IRP/RP takes over control of the management of the Corporate Debtor which was not applicable in the facts of the present case. It was vehemently contended that since this was not a case for proceedings being *in rem*, the second impugned order had been validly and rightly passed by the Adjudicating Authority.

38. Having noticed the rival submissions of both parties, we are of the view that prior to dwelling upon the debt and default aspect of the present case at hand, we ought to first consider whether the second impugned order has been passed in violation of Section 14 of the IBC and is ex-facie without jurisdiction for being statutorily impermissible.

39. At this juncture, it may be useful to draw our attention to Section 14(1)(a) of the IBC which clearly prohibits: '*the institution of suits or continuation of pending suits or proceedings against the Corporate Debtor including execution of any judgment, decree or order in any court of law, tribunal, arbitration panel or other authority;*'

40. Having noticed the moratorium provisions extracted above, we may now advert to the judicial precedents relied upon by both parties in support of their respective contention as to whether the Adjudicating Authority could have admitted the present Section 9 petition when the Corporate Debtor had already been admitted into CIRP but the CIRP admission order having been subsequently granted interim stay by this Tribunal which purportedly brought moratorium into a state of abeyance.

41. Reliance has been placed by the Respondent on the judgment of the Hon'ble Supreme Court in ***Glas Trust Company LLC Vs. Byju Raveendran, 2024 SCC OnLine SC 3032*** wherein it has been held that once CIRP is initiated, several 'significant changes' take place including the transfer and management of the

affairs of the Corporate Debtor to the IRP and declaration of moratorium whereby the proceedings change character to become *in rem* proceedings. The relevant extracts of the said judgment is as reproduced below:

42. *From this scheme of Chapter II IBC, it appears that the admission of an application is a significant event that alters the nature of the proceedings, and the stakeholders involved. Initially, when the petition is filed by the financial creditor, operational creditor or corporate applicant, as the case may be, the proceedings are in personam and the only relevant stakeholders are the applicant creditor and the corporate debtor. However, once the petition is admitted and CIRP is initiated, several significant changes take place, including the transfer of the management of the affairs of the corporate debtor to the IRP, the declaration of the moratorium, and the collation of the claims against the corporate debtor. Therefore, the proceedings now change character — they become in rem and are no longer the preserve of only the applicant creditor and the corporate debtor and even creditors who were not the original applicants, become necessary stakeholders.*

It is contended by the Respondent that in the present case when the IRP had not taken over the charge of the Corporate Debtor and the Corporate Debtor was still functioning under the previous management, 'the significant changes' as pointed out in the above **Byju** judgment having not taken place, the proceedings were not *in rem*. Hence, the Adjudicating Authority enjoyed jurisdiction to adjudicate on the Section 9 application which had been filed by the Respondent-Operational Creditor.

42. Attention was also adverted to the judgment of this Tribunal in **Axis Bank Ltd. Vs. Asset Reconstruction Company India Ltd., 2025 SCC OnLine NCLAT 1224** in which this Tribunal had sought to answer as to what is the effect on moratorium on the interim stay of a Section 7 admission order.

The relevant excerpts of the above judgment are as reproduced below:

"69. *Having noticed the judgments of the Hon'ble Supreme Court and this Tribunal, which have been referred by the parties, we come to the following conclusion:*

(i) *After admission of Section 7 application on 22.02.2023, by which CIRP commenced against the CD, the proceeding became proceedings in rem. The nature of which proceedings shall continue to be proceedings in rem, even though admission order dated 22.02.2023 was stayed by this Tribunal on 07.03.2023.*

(ii) *On passing of interim order dated 07.03.2023, the admission order appointing IRP and order declaring moratorium were kept in abeyance but shall not be treated to have been quashed by passing interim order on 07.03.2023.*

(iii) *The effect of interim order dated 07.03.2023 is not to revive the state of affairs, which were prevailing before the date 22.02.2023, when order of*

admission was passed by Adjudicating Authority under Section 7.

70. In view of the foregoing discussions and conclusions, we answer Question Nos.(I), (II) and (III) in following manner:

Answer to Question No.(I)	:	The effect and consequences of the interim order dated 07.03.2023 passed by this Tribunal, staying the operation of the admission order dated 22.02.2023 shall be that the order dated 22.02.2023 shall be treated to have been kept in abeyance, but shall not be treated to have been quashed.
Answer to Question No.(II)	:	On passing of the interim order dated 07.03.2023, staying the admission order dated 22.02.2023, the status quo prevailing prior to passing of the order dated 22.02.2023, shall not be revived.
Answer to Question No.(III)	:	On passing of the interim order dated 07.03.2023, staying the admission order, the moratorium, which commenced on 22.02.2023, shall be kept in abeyance, but shall not be treated to be quashed, however, the nature of proceedings, i.e. proceedings in rem shall continue to be the same, even after the stay order dated 07.03.2023.

It was contended by the Respondent that this Tribunal had categorically held that with the grant of stay to CIRP admission order, the moratorium is kept in abeyance but shall not be treated to have been quashed. Hence applying the ratio of the above **Axis Bank** judgment to the facts of the present case where the CIRP admission order of 19.11.2025 was subsequently stayed by this Tribunal on 24.11.2025, the moratorium stood suspended and hence there was no statutory embargo on the Adjudicating Authority to proceed with adjudication of the Company Petition No. 812 of 2019 and its admission.

43. Attention was also adverted to the decision of the Hon'ble Supreme Court in **Mars Remedies Pvt. Ltd. Vs. BDH Industries Ltd. 2023 SCC OnLine SC 2551** wherein the Supreme Court had held that the Corporate Debtor cannot be allowed to have benefit of best of both worlds of seeking a stay of a CIRP admission order while using the stay of that CIRP to shield it from all other insolvency proceedings. The relevant excerpt of the above judgment is as reproduced below:

"8. As a result of the above order, the proposed intervenor is stuck. The CIRP initiated at the behest of the respondent in the above Civil Appeal is put on hold by this Court and the CIRP initiated by the proposed intervenor is put on hold by the NCLT. Therefore the

intervenor is caught in the middle and hence he seeks appropriate directions. The main contention of the corporate debtor who is the appellant in the above main appeal is that there cannot be two CIRPs simultaneously going on against the same debtor. The said contention is legally well-founded. But today, both CIRPs are on hold. This is despite the fact that the order passed in favour of the proposed intervenor in his own application under Section 7 IBC, by the NCLAT has attained finality and there is no impediment for the CIRP initiated by the proposed intervenor to proceed further.

9. It is understandable that if the CIRP initiated by the respondent in the above civil appeal is on track. If it is not on track, at least the other CIRP should be allowed to proceed. The Corporate Debtor cannot be allowed to have benefit of the best of both the worlds."

It was contended by the Respondent that the above ratio is applicable in the present factual matrix as the present Respondent was placed in a position similar to the Intervener in the above judgment. Hence, when the CIRP admission order in Company Petition No. 595 of 2019 was merely put on hold, subsequent Section 9 proceedings should be permitted to proceed and not get defeated or stultified because of a stayed CIRP.

44. Repelling the contentions of the Respondent, the Appellant has contended that when looked at the factual matrix the ***Mars Remedies*** judgment supra, the Hon'ble Apex Court was not dealing with a situation wherein the Tribunal had passed the orders against the Corporate Debtor during the moratorium. In the ***Mars Remedies*** matter, the subsequent CIRP had not yet been admitted and the Hon'ble Supreme Court was dealing only with the restoration/prosecution of another insolvency petition. In fact, the Hon'ble Supreme Court had observed in this judgment that there cannot be two CIRPs simultaneously going on against the same debtor. We are inclined to agree with the Appellant that the observation of the Hon'ble Supreme Court in ***Mars Remedies*** judgment cannot be construed as authorising a second CIRP admission order during subsistence of an earlier CIRP and moratorium.

45. This view of the Appellant is also buttressed by the judgement of the Hon'ble Supreme Court in ***Alchemist Asset Reconstruction Company Ltd. Vs. Hotel Gaudavan, (2018) 16 SCC 94*** wherein it has been clearly held that once moratorium under Section 14 comes into effect, continuation or institution of proceedings against the Corporate Debtor would be in violation of Section 14 and hence non-est in law. It would be useful to extract the relevant para of the said judgment which is as extracted below:

"4. The Mandate of the new IBC is that the moment an insolvency petition is admitted, the moratorium that comes into effect under Section proceedings 14(1)(a) expressly interdicts institution or continuation of pending suits or proceedings against corporate debtors.

5. This being the case, we are surprised that an arbitration proceeding has been purported to be started after the imposition of the said moratorium and appeals under Section 37 of the Arbitration Act are being entertained. Therefore, we set aside the order of the District Judge dated 6-7-2017 and further state that the effect of Section 14(1)(a)

is that the arbitration that has been instituted after the aforesaid moratorium is non est in law."

46. We are of the view that the grant of interim stay by this Tribunal did not result in the extinction, termination, quashing or obliteration of the CIRP proceedings or the attendant moratorium. Even if the CIRP admission order is stayed, the moratorium under Section 14 continues unless specifically vacated. Hence, the above judgement clearly supports the contention of the Appellant that even though the CIRP admission order of 19.11.2025 was stayed by this Tribunal on 24.11.2025, the Corporate Debtor still continued to remain protected from being subjected to another CIRP by the Adjudicating Authority as it was bereft of jurisdiction on 12.01.2026 because of moratorium. The Adjudicating Authority had failed to consider and apply the settled legal position that the insolvency framework mandates a single, consolidated CIRP for a Corporate Debtor for parallel admissions would defeat the objectives of certainty and orderly resolution of the Corporate Debtor.

47. In view of the foregoing discussion, we are therefore of the considered view that the second impugned order clearly suffers from a jurisdictional infirmity as the Adjudicating Authority could not have exercised its jurisdiction under Section 9 of the IBC in respect of a Corporate Debtor which was already under CIRP though under an interim stay and therefore the same cannot be sustained.

48. In result, we dispose of the two appeals with the following directions:

(a) The impugned order dated 19.11.2025 admitting Company Petition No. 595 of 2019 under Section 9 of the IBC is set aside. The Appeal is allowed. Accordingly, the order passed by the Adjudicating Authority initiating CIRP against the Corporate Debtor and all other orders pursuant to impugned order are set aside. The Corporate Debtor company is released from the rigours of CIRP with immediate effect.

(b) The second impugned order dated 12.01.2026 passed by the Adjudicating Authority is found to be non-est in law and hence not sustainable. The Appeal is allowed. The second impugned order is accordingly set aside. However, liberty is given to the Respondent to file an application under Section 9 afresh in accordance with law if and when situation so arises. No costs.