National Company Law Appellate Tribunal, New Delhi

COMPANY APPEAL (AT) (Insolvency) No. 229 of 2020

(Arising out of Order dated 20th December, 2019 passed by National Company Law Tribunal, Mumbai Bench, Mumbai in Company Petition IB- 522/MB/2019)

IN THE MATTER OF:

Anup Sushil Dubey
Suspended Board Member
Umarai Worldwide (P) Ltd.
R/o Saptashringi CHS, B-2/1-7
Sector-25, Sanpada, Juinagar, Navi Mumbai
Thane, Sanpada, Maharashtra – 400705. **.....Appellant**

Versus

1. National Agriculture Co-operative
Marketing Federation of India Ltd.
Registered Office:
NAFED House, Sidhartha Enclave
Ring Road, New Delhi – 110014
Regional Mumbai Office:
Kothari Sadan, A Wing, 3rd Floor,
Plot No. 270, 11th Road,
Near Madhu Park, Khar (W),
Mumbai – 400052

2. Krishna Gopal Ratnlal Maheshwari
Insolvency Resolution Professional
Registered Office:
408, Manish Chambers
Sonawala Road, above Kotak Bank,
Goregaon (E)
Mumbai - 400063 **....Respondents**

Appellant: **Mr. Sanjay K. Ruia and Ms. Shradha Agrawal, Advocates.**

Respondents: **Mr. Chitranshul Sinha, Ms. Sonali Khanna and Mr. Anshuman Mohit Chaturvedi, Advocates for R-1.**
Ms. Honey Satpal and Mr. Samriddh Bindal, Advocates for R-2.

J U D G E M E N T

[Per; Shreesha Merla, Member (T)]

1. Challenge in this Company Appeal is to the Order dated 20.12.2019, passed by the 'Adjudicating Authority' (National

Company Law Tribunal, Mumbai Bench), by which Order, the 'Adjudicating Authority' has admitted the Application filed by M/s. National Agriculture Co-operative Marketing Federation of India Ltd. (herein after referred to as 'NAFED'), the Operational Creditor against Umarai Worldwide Private Limited, the 'Corporate Debtor'.

2. Briefly put, the facts relevant to the case are that NAFED/Operational Creditor and the Corporate Debtor entered into a Leave and Licence Agreement for the usage of cold storage facilities on 01.10.2015, for a period of three years. The Agreement provides for the payment of licence fee of Rs. 9,31,000/- payable on the 7th day of every calendar month with an increase of 10% in the monthly licence fee on or after the expiry of 12 months. As per Clause 1.14 of the said Agreement, in case of default in payment of any monthly licence fee, the Corporate Debtor would be liable to pay an interest @ 21% p.a. for the delayed period. It is stated by the First Respondent that the Corporate Debtor defaulted in the payment of monthly rentals from September 2017 onwards and an outstanding amount of Rs. 2,14,14,560/- is due and payable together with interest, electricity and water charges. It is the case of First Respondent/NAFED that the Corporate Debtor acknowledged and confirmed the 'outstanding debt' vide its letters dated 01.06.2017 and 26.02.2018, but despite several reminders and also issuance of eviction notice on 24.05.2018, the Corporate Debtor failed to make the necessary payments.

Hence a Demand Notice dated 26.09.2018 in Form 3 under Section 8 of I&B Code 2016, was issued demanding payment of Rs. 1,83,45,278/- which is stated to be due from September, 2017 onwards. The Corporate Debtor in their reply dated 10.11.2018, denied all the claims and sought for renewal of the Leave and Licence Agreement.

3. While admitting the Section 9 Application, the 'Adjudicating Authority' observed as follows;

> *"6. The Counsel for the Petitioner submits that the Corporate Debtor also issued several cheques in discharge of the outstanding liabilities towards the Petitioner, but the cheques got dishonored on presentation. Thus, the Petitioner had also initiated the criminal prosecution against the Corporate Debtor under Section 138 of Negotiable Instruments Act, 1881 for one such cheque and same is pending before the concerned court at Mumbai.*
> *7. The Counsel for the Petitioner submits that the Corporate Debtor was served with the Petition and date of hearing was also intimated to him by the Petitioner. Despite the receipt of notice, the Corporate Debtor did not appear for the hearing on 10.10.2019. The Counsel for the Petitioner was heard and the matter was reserved for orders.*
> *8. The Petitioner has issued several invoices towards the payment of monthly licence fee as agreed under the Leave & Licence Agreement and the same remained unpaid. The Corporate Debtor vide letter dated 26.02.2018 has confirmed to release the outstanding dues for rent of two months and vide earlier letter dated 01.06.2017, the Corporate Debtor confirmed to clear the outstanding dues of rent, electricity and penalties. The Leave and Licence Agreement executed between the Petitioner and the Corporate Debtor entitles the Petitioner to claim the licence fee and other charges from the Corporate Debtor. Therefore, there is a clear debt established by the said agreement and the Corporate Debtor has defaulted in payment of such dues and therefore, the Corporate Debtor is*

in breach of the contractual obligations under the Leave and Licence Agreement. Hence, the Petition deserves to be admitted."

4. Learned Counsel appearing for the Appellant vehemently argued that the 'Adjudicating Authority' had passed an 'Ex-Parte Order' without giving it a sufficient opportunity to be heard. She submitted that criminal proceedings were initiated against the Appellant due to which the Appellant was in custody at the time of initiation of Section 9 proceedings and though efforts were made to follow up with the matter, the case status on NCLT website displayed a single date and, therefore, it was not possible for the Appellant to have knowledge of the proceedings. She, further, submitted that it was only on 07.01.2020, that the Advocate who had filed the Reply to the Demand Notice, informed the Appellant that he had received notices informing about the proceedings but due to lack of instructions, did not enter appearance.

5. Learned Counsel appearing for the Appellant, further, contended that the alleged 'Debt in Default' as per Demand Notice is for the period September 2017 to October 2018, which is subsequent to the termination of the Agreement; that the 'Adjudicating Authority' relied on letters dated 01.06.2017 and 26.02.2018, which is with respect to two outstanding months prior to termination and pertains to a different time period and hence, cannot be construed as 'Debt in Default'; that letters dated 11.09.2017, in Reply to the termination notice dated 23.08.2017, and letter dated 15.09.2017, explicitly state that no

dues are payable from October 2017 onwards and vehemently contended that letters dated 23.08.2017, 11.09.2017, 15.09.2017, 15.02.2018, 19.09.2018 and 10.11.2019, show a 'Pre-Existing Dispute' which was suppressed by the First Respondent and, therefore, the Admission of the Application is erroneous.

6. Learned Counsel for the Appellant contended that the Agreement entered into with NAFED is a Leave and Licence Agreement and rentals on immovable property does not amount to 'Operational Debt' as defined under Section 5 (21) of the I&B Code and the same was observed by this Tribunal in ***M. Ravindranath Reddy V/s. G Kishan, [Company Appeal (AT) (Ins) No. 331 of 2019].*** The Learned Counsel also argued that the 'Adjudicating Authority' had failed to acknowledge the difference in the amount demanded in the Demand Notice i.e. Rs. 1,83,45,278/- and the amount claimed in Form 5, which is Rs. 2,14,14,559.03/- and that there is a security deposit of approximately Rs. 27.93/- Lakhs and another Rs. 10 Lakhs towards electricity security which was not adjusted by NAFED towards dues if any.

7. Learned Counsel appearing for the First Respondent argued that the Appeal was barred by 'Limitation' as it was filed beyond the prescribed period of 30 days without filing any Application seeking condonation; that the Demand Notice dated 26.09.2018 was issued under Section 8 of the Code to the Corporate Debtor alongwith all the relevant 'Invoices' and 'Debit Notes', but the

Demand Notice was not replied to within the statutory period provided under Section 8(2) of the Code and it was replied to only on 10.11.2019, raising frivolous objections; that there is no evidence of any 'Pre-Existing Dispute' provided by the Corporate Debtor in their Reply to the Demand Notice; the Appellant undertook to clear the entire outstanding amount owed to NAFED under the condition that the Agreement would be extended by a further period of two years; that the quantum of the outstanding amount was ascertained by the Resolution Professional subsequent to the receipt of claims and the claims so admitted, amounted to Rs. 2.64/- Crores; that receiving any consideration by way of licence fee falls within the purview of providing services and falls within the definition of 'Operational Debt' held by this Tribunal in ***Sarla Tantia V/s. Nadia Healthcare Pvt. Ltd. [Company Appeal (AT) (Ins) No. 513 of 2018]*** and also in ***Jindal Steel and Power Pvt. Ltd. V/s. DCM International Ltd. [Company Appeal (AT) (Ins) 288 of 2017]*** and that the Hon'ble Apex Court in ***Mobilox Innovations Private Limited V/s. Kirusa Software Private Limited (2018) 1 SCC 353,*** noted that any consideration by way of rent, Leave and Licence, while letting out premises would fall within the ambit of Section 5(21) of the Code and, therefore, since, there is an existence of 'Debt and Default', there is no evidence of any 'Pre-Existing Dispute' and the sum is higher than the stipulated threshold for initiating 'CIRP process', the 'Adjudicating Authority' had rightly admitted the Application.

8. This Tribunal finds force in the submission made by the Learned Counsel for the Appellant, that the Appellant was in custody during that period and hence, the minimal delay of 9 days ought to be condoned. Keeping in view, that the said delay of 9 days falls within the 15 days period as per Section 61 (2) of the Code whereby and whereunder this Appellate Tribunal is endowed with the Judicial discretion to condone the delay, there being a sufficient cause in this regard for not filling the Appeal in time, in the interest of justice, on being subjectively satisfied, the delay of 9 days is condoned even in the absence of a formal Application being filed thereto.

9. At the outset, this Tribunal addresses itself to the contention of the Learned Counsel for the Appellant that the 'Adjudicating Authority' ought not to have passed an 'Ex-Parte Order' without giving it sufficient opportunity to be heard. It is seen from the record that letters dated 15.07.2019 and 18.09.2019, were received by the Advocate for the Corporate Debtor which establish that the Corporate Debtor was aware of the proceedings. The contention of the Learned Counsel appearing for the Appellant that the Appellant was released from custody only in August 2019 and, therefore, was not aware of the proceedings, is not tenable as the notice issued to the Appellant by the 'Adjudicating Authority' on 18.09.2019, regarding the matter being taken up for hearing, was subsequent to the release date of the Appellant. Further, the Impugned Order is dated 21.01.2020, which is more than four months after the

release date. Additionally, the Corporate Debtor is a Private Limited Company and it cannot be stated that it could not have been represented by any other person merely because the Director of the Corporate Debtor Company, was in custody. Therefore, this Tribunal is of the considered view that sufficient opportunity was very much available for the Appellant to have appeared before the 'Adjudicating Authority', but despite service of notice did not choose to do so.

10. Heard both sides at length. The main issues which fall for consideration in this Appeal are;

(a) Whether dues, if any, arising from the 'Leave and Licence Agreement' is construed as an 'Operational Debt'?

(b) Whether there is any 'Pre-Existing Dispute' prior to the issuance of the Demand Notice?

11. In order to prove a 'Debt' as an 'Operational Debt' the criteria that needs to be met is as follows;

(a) Claim in respect of provisions for goods and services

(b) Employment or debt in respect of dues and

(c) Such repayment of dues which should arise under any law in force at that time.

12. To ascertain the same, it is essential to reproduce the relevant definitions as enumerated in the code;

"Section 3(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;*
>
> ***Section 3(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;*
>
> ***Section 3(12):*** *"default" means non-payment of debt when whole or any part or instalment of the amount of debt has become due and payable and is not [1][paid] by the debtor or the corporate debtor, as the case may be;*
>
> ***Section 5(20):*** *"operational creditor" means a person to whom an operational debt is owed and includes any person to whom such debt has been legally assigned or transferred;*
>
> ***Section 5(21):*** *"operational debt" means a claim in respect of the provision of goods or services including employment or a debt in respect of the [1][payment] of dues arising under any law for the time being in force and payable to the Central Government, any State Government or any local authority;"*

Whether the First Respondent/NAFED by providing 'Lease' would be treated as an 'Operational Creditor', it is necessary to ascertain whether the First Respondent is providing services to the Corporate Debtor and whether the alleged dues fall within the meaning of Section 5 (21) of the Code.

13. Learned Counsel for the Appellant relied on a decision of this Tribunal in ***M. Ravindranath Reddy V/s. G Kishan, [Company Appeal (AT) (Ins) No. 331 of 2019*** wherein it is observed that the Appellant being a tenant, having not made any claim in respect of the provisions of the goods or services and debt in

respect of repayment of dues does not arise under any Law for the time being in force payable to the Central Government or State Government. It was also observed as follows;

> *"31. In case of lease of immovable property, Default can be determined, on the basis of evidence. While exercising summary jurisdiction, the Adjudicating Authority exercising its power under Insolvency and Bankruptcy Code 2016, cannot give finding regarding default in payment of lease rent, because it requires further investigation"*
>
> *(Emphasis Supplied)*

14. Learned Counsel for the Respondent relied on Judgements of this Tribunal in ***Sarla Tantia V/s. Nadia Healthcare Pvt. Ltd. [Company Appeal (AT) (Ins) No. 513 of 2018]*** and in ***Jindal Steel and Power Pvt. Ltd. V/s. DCM International Ltd. [Company Appeal (AT) (Ins) 288 of 2017***.

15. In ***Sarla Tantia V/s. Ramaanil Hotels & Resorts Pvt Ltd.,*** this Tribunal while dealing with dues arising from the terms of the Leave and Licence Agreement held and observed it to be an 'Operational Debt'. This Tribunal in ***Citycare Super Specialty Hospital V/s. Vighnaharta Health Visionaries Pvt. Ltd.*** has also observed that there is an admission of rent of certain periods to be due and payable which are reflected in the Books of Accounts, but subsequently, dismissed the 'Appeal' on the ground of 'Pre-Existing Dispute'.

16. The law has not gone into defining goods or services – hence, one has to rely on general usage of the terms so used in the law, with due regard to the context in which the same has been used. Simultaneously, it is also relevant to understand the intention of

the lawmakers. The Bankruptcy Law Reforms Committee (BLRC), in its report dated November 2015, indicates *"the lessor, that the entity rents out space from is an operational creditor to whom the entity owes monthly rent on a three-year lease"*. Hence, the BLRC recommends the treatment of lessors/landlords as Operational Creditors. However, in the definition adopted by the Legislature only claims relating to 'Goods and Services' were included within the definition and purview of 'Operational Debt'.

17. The Hon'ble Supreme Court in ***Mobilox Innovations Private Limited V/s. Kirusa Software Private Limited (2018) 1 SCC 353*** in Para 5.2.1 observed as hereunder;

> *"5.2.1 Who can trigger IRP?*
> *Here, the code differentiates between financial creditors and operational creditors. Financial creditors are those whose relationship with the entity is a pure financial contract, such as a loan or a debt security. Operational creditors are those whose liability from the entity comes from a transaction on operations. Thus, the wholesale vendor of spare parts whose spark plugs are kept in inventory by the car mechanic and who gets paid only after the spark plugs are sold is an operational creditor. Similarly, the lessor that the entity rents out space from is an operational creditor to whom the entity owes monthly rent on a three-year lease. The Code also provides for cases where a creditor has both a solely financial transaction as well as an operational transaction with the entity. In such a case, the creditor can be considered a financial creditor to the extent of the financial debt and an operational creditor to the extent of the operational debt"*
>
> *(Emphasis Supplied)*

18. The Learned Counsel contended that 'Lease Rentals' are not a 'Service' and do not fall within Regulation 32 (Insolvency Resolution Process for Corporate persons, Regulation 2016) read

with Section 14 (2) which defines essential goods or services as follows;

(1) Electricity

(2) Water

(3) Telecommunication Services

(4) Information Technology Services

To the extent, these are not direct input to the output produced or supplied by the Corporate Debtor.

19. The contention of the Learned Counsel for the Appellant that Regulation 32 read with Section 14 (2) is applicable to the facts of this case and that cold storage facilities cannot be construed as 'essential service' and, therefore, does not fall within the meaning of 'Operational Debt' as defined under Section 5 (21), is untenable, having regard to the fact that Regulation 32 read with Section 14 (2) only mentions essential goods and services *whose supply cannot be terminated during the course of CIRP.* The Code does not anywhere specify that the goods so mentioned under Regulation 32 are the same as those which fall within the ambit of the definition of Section 5 (21). Annexure 1D of the Leave and Licence Agreement stipulates that the cold storage with the machinery and equipment has been designed for storage of all agricultural commodities. The Lessee being in need of a cold storage participated in the tender floated by the Lessor and sought for grant for the use and occupation of the cold storage unit. It is apparent from the material on record and the terms and conditions of the Leave and Licence Agreement

that the Appellants have leased out the premises for 'Commercial Purpose', which comes within the meaning of 'Service' for the purpose of sub-Section (21) of Section 5 of the I&B Code, 2016.

20. At this juncture, we find it relevant to refer to the definition of 'Service' as defined under Section 2 (42) of the Consumer Protection Act 2019;

> *"(42) "service" means service of any description which is made available to potential users and includes, but not limited to, the provision of facilities in connection with banking, financing, insurance, transport, processing, supply of electrical or other energy, telecom, boarding or lodging or both, housing construction, entertainment, amusement or the purveying of news or other information, but does not include the rendering of any service free of charge or under a contract of personal service;"*

21. The provisions of the Central Goods and Services Tax Act 2017. Schedule – II of the Act lists down the activities that are to be treated as supply of goods or services, and paragraph 2 of the Schedule stipulates as follows;

> *(a) any lease, tenancy, easement, licence to occupy land is a supply of services;*
> *(b) any lease or letting out of the building including a commercial, industrial or residential complex for business or commerce, either wholly or partly, is a supply of services."*

As the premises in the case on hand is leased out for 'Commercial Purpose', the cold storage owner/NAFED on collection is required to pay 'service tax' which is reflected in the tax invoices and 'Ledger Accounts' which is part of the record filed.

22. Therefore, keeping in view, the observations made by the Hon'ble Supreme Court in Para 5.2.1 of ***Mobilox (Supra),*** and having regard to the facts of the instant case this Tribunal is of the earnest opinion that the subject lease rentals arising out of use and occupation of a cold storage unit which is for Commercial Purpose is an 'Operational Debt' as envisaged under Section 5 (21) of the Code. Further, in so far as the facts and attendant circumstances of the instant case on hand is concerned, the dues claimed by the First Respondent in the subject matter and issue, squarely falls within the ambit of the definition of 'Operational Debt' as defined under Section 5 (21) of the Code.

23. The other issue raised by the Counsel for the Appellant is that the Agreement was terminated on 23.08.2017, and that the dues demanded in that Demand Notice dated 26.09.2018, pertain to the period subsequent to the termination of the Agreement and, therefore, cannot be construed as 'debt due and payable', and that there is a 'Pre-Existing Dispute' prior to the issuance of Demand Notice which can be seen from the various letters dated 23.08.2017, 11.09.2017, 15.09.2017, 15.02.2018, 19.09.2018 and 10.11.2019.

24. Section 5(6) defines dispute which reads as follows;

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

25. A perusal of the letter dated 01.06.2017, depicts that the following rents and electricity dues were pending from the Corporate Debtor;

Month	*Rent*	*Tds*	*Net Payable Amt.*
April	*1177715*	*102410*	*1075305*
May	*1177715*	*102410*	*1075305*
Electricity charges up to March 2017 rupees:			*13,13,490*
TOTAL			*34,64,100*

26. It is seen from the material on record that though the Agreement was terminated on 23.08.2017, the Corporate Debtor continued to be in possession of the said storage facility till August, 2018 and has even sought for extension of time for a further period of two years as can be seen in the communication dated 19.09.2018, addressed by the Corporate Debtor to NAFED. The said letter is reproduced as hereunder;

> *To,* *DATE 19/09/2018*
> *Shri A.K. Rath*
> *Executive Director (IU)*
> *Nafed "Nafed House"*
> *New Delhi - 14*
>
> *Sub:- NAFED COLD STORAGE*
>
> *DEAR SIR,*
>
> *In response to my visit to your head office on 6th-7th September, 2018 regarding solves the issues of nafed cold storages. Matter has been discussed with you in detailed. As advised we have submitted our detailed payment proposal vide our letter dated 12th September 2018 with the request kindly extend the leave & licence agreement for further two years to your Mumbai branch.*

Further after not getting any confirmation from your local office we have reminded them vide our mail dated 18/09/2018.

In the meantime undersigned tried to contact you. Several times but unable to contact. And whenever contacted simply I have been informed that you are not out of office.

Now since as per existing agreement my last date is 30/09/2018. Therefore my submissions are as under:-

1. *As discussed in your chamber without any invoice of your branch we have made payment of September 2017 for an amount of Rs. 11,06,028/- through RTGS UTR NO – CIUBH18255028436 dated 19/09/2018.*
2. *As stated from past one year we have not received any debit note from your branch hence in absence of debit note we are unable to pay the rent.*
3. *You are well aware that during the month of February nafed display a notice outside the cold storage (photo enclosed). Informing the traders not to keep their goods in cold storages.*
4. *Due to their notice, immediately our parties lifted their stocks from the cold storage and no parties further deposited their goods in nafed cold storage due to the panic created by you through said display.*
5. *Say from date 15 February 2018 Onwards the nafed cold storage is always near to empty. Therefore after display of such notice, nafed has no right to claim monthly rent. From date 15 February 2018 onwards.*
6. *Till date your not a single officials visited my office for taking charge of cold storage.*
7. *As regards bank guarantee from the day one we are ready to submit the bank guarantee as per agreement but always your office pressurised us to submit the bank guarantee only from nationalized bank.*

8. *Finally as proposed by us vide our proposal dated 12-09-2018, if nafed will extend to leave and licence for further two years, we are ready to make all the payment as stipulate in our letter.*
9. *Otherwise we are ready to vacate your cold storage subjected to minimum 30 days' notice period to enable us to inform our existing reliable parties who till date have faith on us and kept their some stocks to lift it.*

Hoping and waiting favourable reply from your side as assured during the meeting with you in your chamber.

(Emphasis Supplied)

27. This communication dated 19.09.2018, prior to the issuance of Demand Draft notice establishes that the Corporate Debtor was in possession of the subject premises and sought to extend the Lease and Licence for a further period of 2 years and that rental amounts were still due & payable as can be seen from the submission regarding readiness to submit the Bank guarantee. Hence we are of the view that the 'Debt' is 'due & payable'. The Status Report filed by the Resolution Professional subsequent to the receipt of claims by the Creditor of the Corporate Debtor shows that claims worth Rs. 2.64 Crores was admitted against the Corporate Debtor. It is also relevant to note that though the Demand Notice under Section 8 of the Code is dated 26.09.2018, the Corporate Debtor replied to the same on 10.11.2019 much beyond the stipulated period provided under Section 8 (2) of the Code.

28. The Hon'ble Supreme Court in ***Mobilox Innovations Private Limited V/s. Kirusa Software Private Limited (2018) 1 SCC 353*** observed as hereunder;

> *"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)(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"*

29. Adverting to the facts of the case in hand, it is evident that the communication relied upon by the Counsel for the Appellant does not establish any substantial 'Pre-Existing Dispute'. Applying the test of 'existence of a dispute' it is evident that without going into merits of the disputes, the argument raised by the Appellant cannot be construed as a plausible contention requiring further investigation or an assertion of facts supported by evidence. The defence is spurious, mere bluster and not a tenable one in the eye of law, in the considered opinion of this

Tribunal. A dispute does not truly exist in fact between the Parties and, therefore, this Tribunal holds that the communication on record specifically the letter dated 19.09.2018, addressed by the Appellant themselves prior to the issuance of the Demand Notice clearly establishes that there is a 'Debt due and payable' and there is no 'Pre-Existing Dispute', in the teeth of the observations made by the Hon'ble Supreme Court in ***Mobilox (Supra)***.

30. For all the aforenoted reasons, this Tribunal holds that there is no illegality or infirmity in the Impugned Order of the 'Adjudicating Authority' in admitting the Application. Hence, the present Appeal fails and the same is dismissed accordingly. There is no order as to costs.

[Justice Venugopal M.]
Member (Judicial)

[Ms. Shreesha Merla]
Member (Technical)

NEW DELHI
7th October, 2020

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