A M/S. JAI BALAJI INDUSTRIES

v.

D.K. MOHANTY & ANR.

(Civil Appeal No. 5899 of 2021)

OCTOBER 01, 2021

B **[DINESH MAHESHWARI AND VIKRAM NATH, JJ.]**

Insolvency and Bankruptcy Code, 2016 – ss. 8, 9, 62 – Arbitration and Conciliation Act, 1996 – The appellant and respondent no.2 entered into Memorandums of Understanding, whereby the respondent no.2 agreed to supply, 1 lakh and 7 lakh C *metric tons of iron ore per month to the appellant – Dispute arose between the parties as regards the requisite supply and payment – Arbitration clause was invoked – In arbitral awards the respondent company was held liable to make payment – Respondent company filed petition u/s. 34 of the 1996 Act, which were dismissed by the District Court – Appeals were filed before the High Court u/s.37 of* D *the 1996 Act – On 22.11.2019, the appeals were dismissed in default for non-appearance of the respondent – On 17.12.2019, the respondent filed restoration applications – These applications were allowed on 02.03.2020 by the High Court – Before such restoration of appeals, the appellant had sent two demand notices u/s.8 of the* E *2016 Code on 14.02.2020 – Appellant moved NCLT u/s. 9 seeking initiation of CIRP against respondent company – NCLT took the view that on the day the appellant served demand notices to the respondent u/s. 8 and the date when the application u/s. 9 was filed, no proceedings were pending and hence no dispute was pending – Therefore, the NCLT admitted applications made by the appellant* F *u/s.9 of the Code in its capacity as an operational creditor; initiated CIRP in relation to the respondent company – However, the NCLAT held that a dispute was in existence prior to the issuance of demand notices and applications for restoration were filed with advance notice to the appellant- operational creditor – On appeal, held: On facts, it remains indisputable that even if appeals were dismissed in* G *default on 22.11.2019, the respondent company indeed moved an applications for restoration on 17.12.2019 with advance notice to the appellant – Thus, on date of issuance of demand notices (i.e.14.02.2020), the appellant was well aware that appeals u/s. 37 of the 1996 Act had not been decided on merits – This moving of* H *application for restoration of appeal u/s.37 of the 1996 Act and*

bringing it to the notice of the operational creditors is sufficient to bring the matter within the four corners of 'pre-existing dispute', so as to negate any attempt by the operational creditor to seek insolvency resolution – Also, the default dismissal of the appeal could only be regarded as a partial eclipse, which momentarily puts dispute in hibernation – When restoration of appeal is granted, it definitely re-activates the dispute – For the purpose and in scheme of the Code, even pendency of an application for restoration is sufficient to bring the matter within the four corners of "pre-existing dispute" – The applications moved by the appellant for initiation of CIRP were required to be rejected in terms of s.9(5)(ii)(d) of the 2016 Code – The NCLAT had rightly set aside the orders passed by the NCLT.

Mobilox Innovations Pvt. Ltd. v. Kirusa Software Pvt. Ltd.: **(2018) 1 SCC 353 : [2017] 10 SCR 1006;** *Swiss Ribbons Private Limited & Anr. v. Union of India & Ors.*: **(2019) 4 SCC 17: [2019] 3 SCR 535 – relied on.**

K. Kishan v. Vijay Nirman Company Pvt. Ltd.: **(2018) 17 SCC 662 : [2018] 10 SCR 959;** *Vareed Jacob v. Sosamma Geevarghese & Ors.:* **(2004) 6 SCC 378 : [2004] 1 Suppl. SCR 534;** *Addagada Raghavamma & Anr. v. Addagada Chenchamma & Anr.:* **AIR 1964 SC 136 – referred to.**

Case Law Reference

[2018] 10 SCR 959	**referred to**	**Para 7.3**
[2017] 10 SCR 1006	**relied on**	**Para 8.2**
[2004] 1 Suppl. SCR 534	**referred to**	**Para 8.2**
[2019] 3 SCR 535	**relied on**	**Para 12**

CIVIL APPELLATE JURISDICTION: Civil Appeal No.5899 of 2021.

From the Judgment and Order dated 17.08.2021 of the National Company Law Appellate Tribunal, New Delhi in Company Appeal (AT) (Insolvency) No.889 of 2020.

With

Civil Appeal No.5904 of 2021

Diwakar Maheshwari, Karun Mehta, Advs. for the Appellant.

A The following Order of the Court was passed :

ORDER

1. By way of these appeals under Section 62 of Insolvency and Bankruptcy Code, 2016,[1] the appellant, said to be an operational creditor of the respondent No. 2 company, seeks to question the common order B dated 17.08.2021 passed by the National Company Law Appellate Tribunal, Principal Bench, New Delhi,[2] in Company Appeal (AT) (Insolvency) No. 888/2020 and Company Appeal (AT) (Insolvency) No. 889/2020, whereby the Appellate Tribunal, after holding that the operational debt claimed by the appellant was not free from pre-existing C dispute, set aside the orders dated 30.09.2020 passed by the National Company Law Tribunal, Kolkata Bench, Kolkata,[3] in admitting the application made by the appellant for initiation of Corporate Insolvency Resolution Process[4] concerning the respondent No. 2 company.

2. Having regard to the questions sought to be raised, elaboration D on all the factual aspects pertaining to the claim of the appellant and the dispute raised by the respondents is not necessary. Only a brief reference to the relevant background would suffice.

3. The appellant M/s. Jai Balaji Industries is engaged in the business of manufacturing and supply of iron and steel products, having E its plants in the States of West Bengal and Chhattisgarh.[5] The respondent No. 2 Orissa Minerals Development Company Limited is a company engaged in the business of selling iron ore, having its mines in the State of Orissa.[6] The respondent No. 1 is the Managing Director of this company.

F 3.1. The appellant and the respondents entered into two Memorandums of Understanding[7] on 13.08.2003 and 11.03.2004, whereby the respondent No. 2 agreed to supply, respectively, 1 lakh and 7 lakh metric tons of iron ore per month to the appellant. A dispute ensued

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[1] Hereinafter also referred to as 'IBC' or 'the Code'.

G [2] Hereinafter also referred to as 'NCLAT' or 'the Appellate Tribunal'.

[3] Hereinafter also referred to as 'NCLT' or 'the Tribunal'.

[4] 'CIRP' for short.

[5] The appellant is also referred hereinafter as 'the operational creditor', as per the context.

[6] The respondent No. 2 company is also referred hereinafter as 'the respondent company' or 'the corporate debtor', as per the context.

H [7] 'MOU' for short.

between the parties, as regards the requisite supply and payment, leading the appellant to invoke the arbitration clause and the matter was taken up in arbitration proceedings.

4. Two separate arbitral awards dated 22.02.2010 and 15.02.2010 were passed in relation to the respective MOUs in favour of the appellant whereunder the respondent company was held liable to make payment of Rs. 4.44 crores and Rs. 2.79 crores respectively.

4.1. The respondent company challenged the legality and validity of the awards so made by way of petitions under Section 34 of the Arbitration and Conciliation Act, 1996.[8] These petitions were, however, dismissed by the District Court, Barasat by its orders dated 27.02.2012[9] and 29.02.2012[10] respectively. These orders were challenged by the respondent company by way of two appeals[11] under Section 37 of the Act of 1996 before the High Court of Calcutta on 07.08.2012. The appeals remained pending for long but, on 22.11.2019, the same were dismissed in default because of non-appearance of the appellant therein (i.e., the respondent company).

4.2. On 17.12.2019, the respondent company moved respective applications for restoration of appeals;[12] and these applications were allowed by the High Court on 02.03.2020, after finding sufficient cause for non-appearance on the date of hearing. Consequently, both the appeals under Section 37 of the Act of 1996 stood revived and are said to be pending yet.

5. In the meantime and before such restoration of appeals, the appellant sent two separate demand notices under Section 8 of the Code [read with Rule 5 of the Insolvency and Bankruptcy Code (Application to Adjudicating Authority) Rules, 2016] to the respondent company on 14.02.2020, claiming operational debts to the tune of Rs. 7,75,13,684/- and Rs. 5,62,01,258/- under the respective arbitral awards, for the appeals having been dismissed by the High Court.

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[8] Hereinafter also referred to as 'the Act of 1996'.
[9] In Miscellaneous Case No. 159 of 2010 pertaining to MOU dated 13.08.2003.
[10] In Miscellaneous Case No. 173 of 2010 pertaining to MOU dated 11.03.2004.
[11] Being FMA 941 of 2012 pertaining to MOU dated 13.08.2003 and FMA 939 of 2012 pertaining to MOU dated 11.03.2004.
[12] Being CAN No. 12338 of 2019 in FMA 941 of 2012 and CAN No. 12333 of 2019 in FMA 939 of 2012.

A 5.1. In terms of Section 8(2)(a) of the Code, the respondent company sent its replies to the demand notices on 25.02.2020, asserting, *inter alia*, that there existed a dispute and the matter was pending in arbitration proceedings, which pre-dated the receipt of demand notice. Substantiating this assertion, the respondent company stated that the B applications for restoration of appeals were pending in the High Court, which werefiled much before the receipt of demand notices and with advance notice to the appellant. Thus, the respondent company asserted, within 10 days of service of the demand notices, that the matter of debt owed was *sub judice* and no operational debt was payable to the appellant.

C 6. Notwithstanding the replies so sent by the respondent company, the appellant proceeded to move the National Company Law Tribunal, Kolkata Bench, Kolkata, seeking initiation of Corporate Insolvency Resolution Process against the respondent company for non-payment of the aforementioned operational debts and filed two applications under Section 9 of the Code.[13] It would be apposite to indicate at this stage D itself that NCLAT took note of the fact that such applications, though sworn on 29.02.2020, were filed only on 02.03.2020; however, NCLT had proceeded on the assumption that the applications were filed on 29.02.2020. As would be noticed hereafter later, the date of filing of such applications under Section 9 of the Code has its own bearing in the E matter because the aforesaid appeals of the respondent company under Section 37 of the Act of 1996 were restored by the High Court on 02.03.2020.

7. The Adjudicating Authority, i.e., NCLT, dealt with the applications so made by the appellant under Section 9 of the Code by its F common order dated 30.09.2020; and proceeded to examine the question as to whether the appeals under Section 37 of the Act of 1996 were pending on the day the operational debt owed to the appellant became due.

7.1. The NCLT took the view that on the day the appellant served G demand notices to the respondent company under Section 8 of the Code and on the date of filing of applications under Section 9 of the Code, no proceedings were pending in challenge to the arbitral awards and hence, no dispute as to the debt owed to the appellant was existing on the relevant dates. The NCLT further observed that although the High Court

H [13] Being CP (IB) No. 676/KB/2020 and CP (IB) No. 688/KB/2020 respectively.

allowed the applications for restoration of appeals under Section 37 of the Act of 1996, this was belatedly done, only on 02.03.2020. The relevant observations of NCLT could be usefully extracted as under: -

> "7…..On 14.02.2020, the Operational Creditor sent Corporate Debtor notice under Section 8 of Insolvency and Bankruptcy Code, 2016. It was received by the Corporate Debtor on 18/2/2020 and Corporate Debtor replied vide letter dated 25.02.2020. This application to initiate CIRP of the Corporate Debtor has been filed by the Operational Creditor on 29.02.2020. On that day, no Appeal under Section 37 of A & C Act, 1996 was pending because the Hon'ble High Court restored the Appeal on 02.03.2020."

7.2. The NCLT, thereafter, referred to the requirements of Section 9(5)(ii)(d) of the Code and meaning of the expression "dispute" as per Section 5(6) of the Code, and observed as under: -

> "8….From the plain reading of un-disputed facts in this proceeding, it is clear that on the date on which the Corporate Debtor was served with demand notice under Section 8 of the Insolvency and Bankruptcy Code, 2016 or on the date on which the application is filed against the Corporate Debtor, no arbitration proceedings was pending challenging the award."

7.3. The NCLT also referred to the decision of this Court in the case of ***K. Kishan v. Vijay Nirman Company Pvt. Ltd.*: (2018) 17 SCC 662** and observed that the enunciations therein rather operated in favour of the operational creditor, because the operational debt became due and payable when the award was confirmed by the District Judge; and even though an appeal was filed by the corporate debtor, the same was dismissed in default; and notice was given by the creditor only 90 days after dismissal of the appeal. The NCLT even sensed *mala fid*e in the corporate debtor's application for restoration and observed that its officers were using the proceedings in law either to delay or to avoid the legitimate dues. The NCLT, *inter alia,* observed as under: -

> "10. It has been held by the Apex Court that if it is shown that the application under Section 34 of A & C Act, 1996 is pending or Appeal under Section 37 of the Act is pending, then insolvency proceedings cannot be initiated. In this case, on the date of filing of this application under Section 9 of Insolvency and Bankruptcy Code, 2016 i.e on 29.02.2020, no proceeding under Section 34 or

A Appeal under Section 37 of the Act was then pending against the Operational Creditor (although restoration application of Appeal was pending). So on the facts, we hold that above ruling is in favour of the Operational Creditor rather than the Corporate Debtor. In short, Operational debt become due and payable on 29.02.2012 i.e on the date of which the Learned District Judge B confirmed the award under Section 34 of A & C Act. The Corporate Debtor filed Appeal under Section 37 of the Act. It was dismissed in default. 90 days thereafter, on 14.02.2020, Operational Creditor gave the Corporate Debtor notice under Section 9 of the Insolvency and Bankruptcy Code, 2016. On 28.02.2020 (*sic*).

C 11. What we gathered from the above facts is that the operational creditor sent a demand notice three months after the Corporate debtor's appeal was dismissed by Hon'ble high Court. As soon as the Corporate Debtor received the demand notice, its officers swung into action and get the appeal restored. Meantime, the D operational creditor had filed this application. It appears from record that the officers of the Corporate Debtor using the proceedings under the law either to delay or to avoid the legitimate dues of the Corporate Debtor on one or the other ground."

7.4. In view of the above, the NCLT held that the corporate debtor E had committed default in payment of operational debts in spite of the receipt of demand notice; and that there was no dispute pending, by way of arbitral proceedings or otherwise, on the date on which default occurred or the date on which application was filed to initiate CIRP of the corporate debtor. With these observations, the NCLT admitted the applications made by the appellant under Section 9 of the Code in its capacity as an F operational creditor; initiated CIRP in relation to the respondent company; declared moratorium; appointed Interim Resolution Professional; and issued further consequential directions.

8. Being aggrieved by the orders so passed by the Adjudicating Authority (NCLT), the present respondents preferred respective appeals G before the Appellate Tribunal (NCLAT) under Section 61 of the Code contending, *inter alia*, that the applications under Section 9 of the Code were actually filed only on 02.03.2020 but, on that date, the appeals had been restored by the High Court and such restoration related back to the date of filing of appeals. On the other hand, it was contended on behalf H of the appellant that on the date of issuance of the demand notice

(14.02.2020), no arbitration proceedings were pending as the appeals were restored only on 02.03.2020 and, therefore, the Adjudicating Authority had rightly admitted the applications for CIRP in the present case.

8.1. The core of rival contentions came to be noticed by the Appellate Tribunal in the following words: -

> "6. Subsequently, the Application for restoration, filed on 17.12.2019 was restored on 02.03.2020. It is the case of the 'Operational Creditor' that *'as on the date of the issuance of the Demand Notice'* under Section 8 of the Code i.e. on 14.02.2020 there was no Arbitration proceeding pending, as the Appeal under Section 37 was restored only on 02.03.2020. As against these submissions, Learned Solicitor General representing the 'Corporate Debtor' submitted that once the Application for restoration is allowed, it relates back to the original date of filing. It is also submitted that the Section 9 Application was affirmed on 29.02.2020 but was actually filed on 02.03.2020 and therefore as on the date of filing of the Application, the Appeal was already restored."

8.2. The NCLAT referred to the decision of this Court in the case of ***Mobilox Innovations Pvt. Ltd. v. Kirusa Software Pvt. Ltd.*:(2018) 1 SCC 353** and, in keeping with the principles enunciated therein, proceeded to examine as to whether there was a pre-existing dispute concerning the debt in question on the date of receipt of demand notice. Thereafter, NCLAT referred to the decision of this Court in the case of ***Vareed Jacob v. Sosamma Geevarghese & Ors.*: (2004) 6 SCC 378**,to observe that as per the view of the majority therein, once an appeal is restored to its original number, the interlocutory orders therein stand revived unless otherwise directed. By applying these principles, the NCLAT held that once the appeal under Section 37 of the Act of 1996 was restored, it related back to the original date of filing in the following words: -

> "9. What can be gleaned from the majority decision is that upon restoration of Appeal to its original number, the Appellant is restored to the position when the Court has initially dismissed the Appeal for default, unless the Court expressly or by implication excludes the operation of any Orders passed during the period between the dismissal of the restoration.

A 10. The minority view relied upon by the Learned Counsel appearing for 'Operational Creditor' is not applicable to this case. The binding Judicial Precedent is the view taken by the majority. That constitutes the Rule of the Court. Having regard to the interpretation of the ratio laid down in the aforenoted Judgement that once an Appeal is restored to its original number, the fact that
B Interlocutory Orders would stand revived unless otherwise directed, further strengthens the case of the Appellant herein. We are of the considered view that the ratio of majority view of ***'Vareed Jacob' (Supra)*** is applicable to the facts of this case and hence, we hold that once an Appeal under Section 37 of the A&C Act,
C 1996, is restored it relates back to the original date of filing."

8.3. A question regarding effect of pendency of the proceedings for execution of award also cropped up, to which, the NCLAT observed that the execution would come into picture if the appeals under Section 37 had been decided; and 'money recovery' and 'triggering of insolvency'
D were not parallel proceedings. The NCLAT also observed that, in fact, IBC discourages recovery proceedings; and the practice of using this Code towards execution of decree or money recovery is rather deprecated.

8.4. Moving on, the Appellate Tribunal referred to Section 8 of
E the Code and observed that the requirement was to see as to whether there existed a dispute or record of pendency of the suit or arbitration proceedings; and with reference to the facts of the present case, construed that a dispute was in existence prior to the issuance of demand notices. It was also observed that the applications for restoration were filed with advance notice to the operational creditor. Having said that,
F the Appellate Tribunal referred to the enunciations of this Court in the case of ***Mobilox Innovations*** and ***K. Kishan*** (supra) and held that it was a clear case of a pre-existing dispute between the parties prior to the issuance of demand notice and hence, the operational debt cannot be said to be an undisputed one. The relevant part of observations and
G findings of the Appellate Tribunal (NCLAT) in its impugned common order dated 17.08.2021 could be usefully extracted as under: -

> "15. Section 8(2)(a) provides that ***Existence of a Dispute, [if any, or]*** **record of** the pendency of the suit ***or*** Arbitration Proceedings ***filed before the receipt of such*** *Notice* or invoice
H in relation to such Dispute. At the outset, what has to be seen

is *'whether there is any Existence of Dispute', 'if any or'* record of the pendency of the suit or Arbitration Proceedings. In the instant case, it is an admitted fact by both the parties that disputes arose way back in the year 2003 and 2004, and based on the terms of MoU entered into, the 'Operational Creditor' themselves invoked the Arbitration Proceedings. Both the Arbitral Awards were assailed by the 'Corporate Debtor' under Section 34 of A&C Act, 1996 and were dismissed by separate Orders dated 27.02.2012 and 29.02.2012 respectively. The Appeals preferred by the 'Corporate Debtor' under Section 37 of A&C Act, 1996, stood pending till 22.11.2019 on which date they were dismissed for non-prosecution. So even if 22.11.2019 is taken as the date of NPA as contended by the Learned Counsel for the 'Operational Creditor', the fact remains that till that date there is an ongoing Dispute. It can be safely construed that there was a 'Dispute' in Existence prior to the issuance of the Demand Notice. Subsequently, the Appeal under Section 37 was restored on 02.03.2020. The Application for restoration CAN No. 12333 of 2019 was filed by the 'Corporate Debtor' on 17.12.2019 with an advance Notice to the 'Operational Creditor'. Thereafter the Demand Notice was issued on 14.02.2020. The Application was filed on 02.03.2020. We have already observed that upon restoration, the Appeal relates back to the original date of filing and therefore we note that there was a Pre-Existing Dispute **prior** to the date of issuance of the Demand Notice.

16. **To view it in a narrow compass and interpret Section 8(2) (a)** ***that an Arbitral Award ought to be pending as on the exact date of the issuance of the Demand Notice,*** **amounts to mistaking/misconstruing the said Section.** The Hon'ble Supreme Court in ***'Mobilox Innovations Pvt. Ltd.' (Supra)*** has clearly laid down that *'the test for determination for the Adjudicating Authority is to see at the stage of Admitting/ rejecting the Application 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'.* It is observed that the

A Adjudicating Authority does not need to be satisfied whether the defence is likely to succeed so long as a Dispute truly Exists in fact and is not spurious, hypothetical or illusory. In the instant case, the Existence of a 'Dispute' is evident in the Arbitration Proceedings pending from 2004 till 29.11.2019…

B 17. The ratio in the aforenoted Judgement is squarely applicable to the fact of the instant case as it can be seen from the record that the entire basis for the Section 8 Notice is that the Appeals preferred by the 'Corporate Debtor' under Section 37 of the A&C Act, 1996 were dismissed for default on 22.11.2019…

C 18. There is a possibility that the 'Corporate Debtor' may succeed on any claim or part of the claim. Hence, it is apposite to observe that the 'Operational Debt' herein, could not be said to be an 'undisputed debt'. Following the ratio in ***'Mobilox Innovations Pvt. Ltd.' (Supra)*** wherein it was *inter alia* held that so long as a dispute truly exists in fact and is not spurious, the Adjudicating Authority ought to have dismissed the Application. Hence, for all the aforenoted reasons these Appeals are allowed and the Impugned Order is set aside. No Order as to costs."

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(emphasis in the original)

E 9. Seeking to question the aforesaid common order dated 17.08.2021, the appellant (operational creditor) has preferred these appeals under Section 62 of the Code.

9.1. It is strenuously contended on behalf of the appellant that to operate against maintainability of an application by the operational creditor for initiation of CIRP under Section 9 of the Code, there ought to be a dispute existing prior to the service of demand notice. It is submitted that as per the plain language of Section 8(2)(a) of the Code, the dispute, as defined in Section 5(6) of the Code, must strictly be existing as a matter of fact on the date of service of demand notice, as explained and laid down in ***Mobilox Innovations*** (supra). The contention is that any later development in relation to the claim under the demand notice cannot have a bearing on an adjudication of the application filed under Section 9 of the Code. While emphasising on the phraseology of Section 8(2)(a) of the Code, it is contended that the provision specifically seeks to negate and nullify the effect of any *post-facto* development with respect to the default amount for which demand notice had been issued. It is submitted

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that in the present case, subsequent restoration of appeal under Section 37 of the Act of 1996, post service of demand notice, cannot have any bearing on the maintainability of the application filed under Section 9 of the Code.

9.2. As regards the doctrine of 'relation back', it is contended that this doctrine cannot be applied universally and, in any case, cannot be applied in adjudication of an application filed under Section 9 of the Code. It is also contended that NCLAT has wrongly relied upon the majority judgment in the case of ***Vareed Jacob*** (supra), wherein it was held on the facts of the case that the interim order was revived automatically upon restoration of the suit; and has failed to appreciate the other observations in the majority judgment itself, positing that all interim orders cannot be put on the same pedestal. It is further submitted that the minority view in ***Vareed Jacob*** (supra), dealing with the issue pertaining to the legal treatment of rights accrued in the interregnum, i.e., between dismissal of proceedings in default and restoration, could not have been ignored for the reason that such an issue was not dealt with by the majority judgment. Further, a decision of this Court in the case of ***Addagada Raghavamma & Anr. v.Addagada Chenchamma & Anr.*****: AIR 1964 SC 136** has also been referred, to submit that the doctrine of relation back cannot be invoked without limitations, and retroactivity must not affect any vested rights.

10. Having given thoughtful consideration to the submissions made on behalf of the appellant and having examined the record with reference to the law applicable, we are clearly of the view that these appeals remain totally bereft of substance and do not merit admission.

11. In comprehension of the relevant background aspects of the present case, it is clear that the appellant asserts itself to be an operational creditor, for the reason of having a claim against the respondent company, which was the subject matter of arbitration proceedings and led to the arbitral awards in its favour. According to the appellant, challenge to arbitral awards came to an end with dismissal of appeals filed under Section 37 of the Act of 1996 and hence, the notices were sent demanding payment of the amount due, for which the corporate debtor was in default; and any event occurring post issuance of demand notices cannot have any bearing on adjudication of the applications moved for initiation of CIRP.

12. We are impelled to observe at the outset that the entire approach of the appellant seems to be founded on a basic misconception that the Code has provided another avenue for enforcing money recovery by a creditor against the corporate debtor; and the submissions on behalf of the appellant, seeking to maintain its application under Section 9 of the Code for initiation of CIRP against the respondent company, proceed squarely contrary to the elementary principles concerning the object and purpose of the Insolvency and Bankruptcy Code, 2016. In the case of ***Swiss Ribbons Private Limited & Anr. v. Union of India & Ors.*:(2019) 4 SCC 17**, this Court has highlighted the fact that in its scheme and framework, the Code is a beneficial legislation to put the corporate debtor on its feet, and not a mere recovery legislation for the creditors. This Court has observed, -

> "**28.**It can thus be seen that the primary focus of the legislation is to ensure revival and continuation of the corporate debtor by protecting the corporate debtor from its own management and from a corporate death by liquidation. The Code is thus a beneficial legislation which puts the corporate debtor back on its feet, not being a mere recovery legislation for creditors. The interests of the corporate debtor have, therefore, been bifurcated and separated from that of its promoters/those who are in management. Thus, the resolution process is not adversarial to the corporate debtor but, in fact, protective of its interests….."
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> (underlining supplied for emphasis)

12.1. Moreover, as we shall see in necessary details a little later, this Court has consistently made it clear that an operational creditor cannot use the Code for extraneous considerations or as a substitute for debt enforcement procedures; and the object of the Code is to allow the insolvency process against the corporate debtor to be taken up at the instance of an operational creditor only in the clear case, where a real dispute between the parties as to the alleged debt does not exist.

13. As regards legal principles applicable to the questions at hand, we may usefully refer to the relevant provisions of law before adverting to the decisions of this Court.

13.1. Part II of the Code deals with insolvency resolution and liquidation of corporate persons and Chapter II thereof deals with Corporate Insolvency Resolution Process. The root provisions relating

to insolvency resolution by operational creditor are contained in Sections 8 and 9 of the Code.

The inclusive definition of the expression "dispute", for the purpose of Part II, as contained in Section 5(6) of the Code, reads as under: -

> **"5**(6). "dispute" includes a suit or arbitration proceedings relating to —
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> (a) the existence of the amount of debt;
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> (b) the quality of goods or service; or
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> (c) the breach of a representation or warranty;"

The relevant provisions concerning insolvency resolution by an operational creditor, as contained in Sections 8 and 9 of the Code, read as under: -

> **"8. Insolvency resolution by operational creditor.** – (1) An operational creditor may, on the occurrence of a default, deliver a demand notice of unpaid operational debtor copy of an invoice demanding payment of the amount involved in the default to the corporate debtor in such form and manner as may be prescribed.
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> (2) The corporate debtor shall, within a period of ten days of the receipt of the demand notice or copy of the invoice mentioned in sub-section (1) bring to the notice of the operational creditor-
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> (a) existence of a dispute, [if any, or][14] record of the pendency of the suit or arbitration proceedings filed before the receipt of such notice or invoice in relation to such dispute;
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> (b) the payment of unpaid operational debt-
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> (i) by sending an attested copy of the record of electronic transfer of the unpaid amount from the bank account of the corporate debtor; or
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> (ii) by sending an attested copy of record that the operational creditor has encashed a cheque issued by the corporate debtor.

[14] The expression 'if any, or" as now occurring in Section 8 (2) (a) of the Code was substituted by Act 26 of 2018 w.r.e.f. 06.06.2018 for the earlier expression "if any, and". However, even before this amendment, this Court, in the case of ***Mobilox Innovations*** (supra) read down "and" as "or", keeping in mind the legislative intent behind this provision.

A *Explanation*.- For the purposes of this section, a "demand notice" means a notice served by an operational creditor to the corporate debtor demanding payment of the operational debt in respect of which the default has occurred.

B **9. Application for initiation of corporate insolvency resolution process by operational creditor.** – (1) After the expiry of the period of ten days from the date of delivery of the notice or invoice demanding payment under sub-section (1) of section 8, if the operational creditor does not receive payment from the corporate debtor or notice of the dispute under sub-section (2) of section 8, the operational creditor may file an application before the Adjudicating Authority for initiating a corporate insolvency resolution process.

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(2) The application under sub-section (1) shall be filed in such form and manner and accompanied with such fee as may be prescribed.

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(3) The operational creditor shall, along with the application furnish-

(a) a copy of the invoice demanding payment or demand notice delivered by the operational creditor to the corporate debtor;

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(b) an affidavit to the effect that there is no notice given by the corporate debtor relating to a dispute of the unpaid operational debt;

(c) a copy of the certificate from the financial institutions maintaining accounts of the operational creditor confirming that there is no payment of an unpaid operational debt by the corporate debtor, if available;

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(d) a copy of any record with information utility confirming that there is no payment of an unpaid operational debt by the corporate debtor, if available; and

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(e) any other proof confirming that there is no payment of an unpaid operational debt by the corporate debtor or such other information, as may be prescribed.

(4) An operational creditor initiating a corporate insolvency resolution process under this section, may propose a resolution professional to act as an interim resolution professional.

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(5) The Adjudicating Authority shall, within fourteen days of the receipt of the application under sub-section (2), by an order-

(i) admit the application and communicate such decision to the operational creditor and the corporate debtor if,-

(a) the application made under sub-section (2) is complete;

(b) there is no payment of the unpaid operational debt;

(c) the invoice or notice for payment to the corporate debtor has been delivered by the operational creditor;

(d) no notice of dispute has been received by the operational creditor or there is no record of dispute in the information utility; and

(e) there is no disciplinary proceeding pending against any resolution professional proposed under sub-section (4), if any.

(ii) reject the application and communicate such decision to the operational creditor and the corporate debtor, if-

(a) the application made under sub-section (2) is incomplete;

(b) there has been payment of the unpaid operational debt;

(c) the creditor has not delivered the invoice or notice for payment to the corporate debtor;

(d) notice of dispute has been received by the operational creditor or there is a record of dispute in the information utility; or

(e) any disciplinary proceeding is pending against any proposed resolution professional:

Provided that Adjudicating Authority, shall before rejecting an application under sub-clause (a) of clause (ii) give a notice to the applicant to rectify the defect in his application within seven days of the date of receipt of such notice from the adjudicating Authority.

A (6) The corporate insolvency resolution process shall commence from the date of admission of the application under sub-section (5) of this section."

14. The entire scheme of the Code in relation to the insolvency resolution by an operational creditor initially came up for exposition by this Court in the case of ***Mobilox Innovations*** (supra), decided on 21.09.2017.

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14.1. In that case, the appellant had sub-contracted certain work to the respondent and entered into a non-disclosure agreement. The appellant withheld certain payments against invoices raised by the respondent while alleging that certain actions of the respondent were in breach of the non-disclosure agreement. A demand notice was sent by the respondent under Section 8 of the Code and in response thereto, the appellant maintained that there existed serious and *bonafide* disputes and the notice was issued as a pressure tactic. Thereafter, the respondent filed an application before the Adjudicating Authority under Section 9 of the Code, stating that operational debt was owed by the appellant. The Adjudicating Authority dismissed this application by holding that the claim of the operational creditor was hit by Section 9(5)(ii)(d) of the Code since the payment was being disputed by the corporate debtor. However, the Appellate Tribunal allowed the appeal preferred by the operational creditor and remitted the matter to the Adjudicating Authority to consider admission of the application if it was otherwise complete. The order so passed by the Appellate Tribunal was challenged in appeal before this Court.

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14.2. In the backdrop as aforesaid, this Court traversed through the scheme of the Code and particularly, the provisions relating to insolvency resolution by an operational creditor, including the history of making of such provisions. Thereafter, this Court summarised the course of action by the Adjudicating Authority on receiving an application under Section 9 of the Code and the questions to be determined as follows: -

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

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(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

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(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?

If any one of the aforesaid conditions is lacking, the application would have to be rejected..."

14.3. As indicated hereinbefore, at the relevant time of decision in ***Mobilox Innovations***, the expression occurring in Section 8(2)(a) of the Code was "and", which was required to be read as "or" looking to the object of the Code and purpose of the provision. This reading down was later on duly incorporated by the legislature by way of the necessary amendment. This Court, while holding that "and" must be read as "or" to prevent an anomalous situation, laid down that the objective of the Code with regards to operational debts was to ensure that these debts did not enable operational creditors to initiate insolvency resolution process against the corporate debtors prematurely, since debts owed to operational creditors were generally smaller than those owed to financial creditors. Therefore, it was held by this Court that to stave off the initiation of insolvency resolution process for extraneous consideration, it was enough to be noticed that a dispute existed between the parties. This Court said,-

"**38**…We have also seen that one of the objects of the Code qua operational debts is to ensure that the amount of such debts, which is usually smaller than that of financial debts, does not enable operational creditors to put the corporate debtor into the insolvency resolution process prematurely or initiate the process for extraneous considerations. It is for this reason that it is enough that a dispute exists between the parties."

14.4. This Court further held that the Adjudicating Authority was not required to examine the merits of the dispute but it was supposed to examine only *prima facie* if a dispute truly existed between the parties, and that the same was not patently feeble or imaginary. If the answer to the aforementioned was in the affirmative, the Adjudicating Authority was required to reject the application. This Court, *inter alia*, held and laid down as under: -

"**51.** It is clear, therefore, that once the operational creditor has filed an application, which is otherwise complete, the adjudicating

A 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."

(underlining supplied for emphasis)

14.5. This Court, thereafter, examined the facts of the case before it and while setting aside the order of the Appellate Tribunal, said as follows: -

"**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 defence 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 characterising the defence as vague, got up and motivated to evade liability."

15. The issue, as to whether the provisions of the Code could be invoked in respect of operational debt where an arbitral award has been passed against the operational debtor but which has not been finally adjudicated upon, came up for fuller exposition in the case of ***K. Kishan*** (supra), decided on 14.08.2018.

15.1. In that case, the disputes between the parties were referred to arbitration; and the Arbitral Tribunal delivered its award on 21.01.2017,

inter alia, allowing certain claims in favour of the respondent but rejecting three of its cross-claims. A notice dated 06.02.2017 under Section 8 of the Code was sent by the respondent to the corporate debtor, demanding payment which was replied by the corporate debtor on 16.02.2017, disputing the demand since the amount was subject matter of pending arbitration proceedings, while also asserting that as per their accounts, rather, the respondent was to pay a larger amount to them. A petition under Section 34 of the Act of 1996 challenging the award was filed by the corporate debtor on 20.04.2017. Thereafter, a petition under Section 9 of the Code was filed by the respondent on 14.07.2017. The Adjudicating Authority, by its order dated 29.08.2017, admitted the petition on the grounds that the amount was admitted by counsel for the respondent, which rendered the factum of pendency of Section 34 petition irrelevant; and that the award had not been stayed. These findings of the Adjudicating Authority were affirmed by the Appellate Tribunal while additionally holding that the non-obstante clause in Section 238 of the Code would override the Act of 1996. Being aggrieved, the corporate debtor preferred an appeal before this Court.

15.2. It was observed by this Court that one of the counterclaims was rejected on merits and the same was pending adjudication in the petition filed under Section 34 of the Act of 1996 and hence, it could not be said that no dispute existed between the parties. While iterating the enunciations in ***Mobilox Innovations*** (supra) that the dispute must pre-exist the date of receipt of demand notice, it was emphasised by this Court that on its objectives, the Code was not a substitute of recovery proceedings; and an operational debt in an arbitral award could not be allowed to jeopardise a solvent company, which could state that the award was being challenged. This Court further observed that mere factum of challenge would be sufficient to state that the award was in dispute, rendering it to be a case of a pre-existing ongoing dispute; and that the object of the Code, insofar as operational creditors are concerned, is to put the insolvency process against a corporate debtor only in clear cases where a real dispute between the parties as to the debt owed does not exist. This Court exposited in clear terms as follows: -

> "**22**…it becomes clear that operational creditors cannot use the Insolvency Code either prematurely or for extraneous considerations or as a substitute for debt enforcement procedures. The alarming result of an operational debt contained in an arbitral

A award for a small amount of say, two lakhs of rupees, cannot possibly jeopardize an otherwise solvent company worth several crores of rupees. Such a company would be well within its rights to state that it is challenging the arbitral award passed against it, and the mere factum of challenge would be sufficient to state that it disputes the award. Such a case would clearly come within para 38 of *Mobilox Innovations*, being a case of a pre-existing ongoing dispute between the parties. The Code cannot be used *in terrorem* to extract this sum of money of rupees two lakhs even though it may not be finally payable as adjudication proceeding in respect thereto are still pending. We repeat that the object of the Code, at least insofar as operational creditors are concerned, is to put the insolvency process against a corporate debtor only in clear cases where a real dispute between the parties as to the debt owed does not exist."

(underlining supplied for emphasis)

D 15.3. While re-emphasising that in the scheme of IBC, as regards operational debt, all that has to be seen is whether the debt could be said to be disputed, this Court stated in no uncertain terms that challenge to the arbitral award shows a pre-existing dispute, which continues at least until final adjudicatory process has taken place in terms of Sections 34 E and 37 of the Act of 1996. This Court also indicated two diverse eventualities in regard to the challenge to the arbitral award and pointed out as to when the insolvency process may be put into operation and when it cannot be. We may profitably reproduce the relevant passages of the decision in ***K. Kishan*** (supra) as follows: -

F "**27.** We repeat with emphasis that under our Code, insofar as an operational debt is concerned, all that has to be seen is whether the said debt can be said to be disputed, and we have no doubt in stating that the filing of a Section 34 petition against an arbitral award shows that a pre-existing dispute which culminates at the first stage of the proceedings in an award, continues even after G the award, at least till the final adjudicatory process under Sections 34 and 37 has taken place.

28. We may hasten to add that there may be cases where a Section 34 petition challenging an arbitral award may clearly and unequivocally be barred by limitation, in that it can be demonstrated H to the court that the period of 90 days plus the discretionary period

of 30 days has clearly expired, after which either no petition under Section 34 has been filed or a belated petition under Section 34 has been filed. It is only in such clear cases that the insolvency process may then be put into operation.

29. We may hasten to add that there may also be other cases where a Section 34 petition may have been instituted in the wrong court, as a result of which the petitioner may claim the application of Section 14 of the Limitation Act to get over the bar of limitation laid down in Section 34(3) of the Arbitration Act. In such cases also, it is obvious that the insolvency process cannot be put into operation without an adjudication on the applicability of Section 14 of the Limitation Act."

(underlining supplied for emphasis)

16. We are clearly of the view that the aforesaid enunciations are squarely applicable to the facts of the present case. As noticed, on the date when the appellant chose to serve the notices under Section 8 of the Code (i.e., on 14.02.2020), the arbitral awards in the present case had not attained finality and rejection of petitions under Section 34 of the Act of 1996 had been in challenge in appeals under Section 37 thereof. Even if the said appeals were dismissed in default, the respondent company had moved for restoration with advance notice to the appellant. It had not been a clear case of the corporate debtor being in default with no pre-existing dispute.

17. The appellant, however seeks to suggest that the appeals having been dismissed in default and having not been restored as on the date of notice, the law requiring pre-existing dispute is of no application. In that regard, restoration of the appeals is sought to be termed by the appellant as a 'later development' or a '*post-facto* event'. The submissions are neither in conformity with the relevant facts nor compatible with the law applicable.

17.1. On the factual aspect, it remains rather indisputable that even if the appeals were dismissed in default on 22.11.2019, the respondent company indeed moved the applications for restoration on 17.12.2019 with advance notice to the appellant. Thus, on the date of issuance of the notices (i.e., 14.02.2020), the appellant was aware of the fact that the appeals under Section 37 of the Act of 1996 had not been decided on merits and the applications for restoration had been

A moved within 30 days of such default dismissal. It would be interesting to draw a parallel with the illustration stated by this Court in the above quoted paragraph 29 of ***K. Kishan*** (supra), that even if a Section 34 petition had been instituted in a wrong Court and application under Section 14 of the Limitation Act to get over the bar of limitation was being pursued, the insolvency process cannot be put into operation without an adjudication on the applicability of Section 14 of the Limitation Act. The same analogy would apply, rather with more emphasis and force, in relation to a default dismissal where there had not been any adjudication on merits and where the prayer for restoration is pending consideration. We have no hesitation in saying that in such a case, without a final decision on the prayer for restoration, the insolvency process at the instance of an operational creditor cannot be put into operation.

18. For what has been discussed hereinabove, other aspects relating to the principles that restoration would revive the proceeding to the original status are not even required to be gone into, because the fact of moving an application for restoration of appeal under Section 37 of the Act of 1996 and bringing it to the notice of the operational creditor is, in our view, sufficient to bring the matter within the four corners of "pre-existing dispute", so as to effectively negate any attempt by the operational creditor to seek insolvency resolution. However, having regard to the issues sought to be raised, we deem it appropriate to also deal with the ancillary submissions of the appellant.

19. In order to counter the reasoning of NCLAT that restoration of appeal relates back to the date of its filing, reference is made on behalf of the appellant to a decision of this Court in ***Addagada Raghavamma*** (supra). The question of applying the doctrine of relation back arose in the said case in the wake of a question as to the date from which severance in status would be deemed to have taken place in the event of declaration by a member of Joint Hindu Family of his intention to live separate. The Court found that there were two ingredients of such a declaration: one being expression of intention and other being of bringing such expression to the knowledge of the persons affected; and it was found that once the knowledge was brought home (depending on the facts of each case), it would relate back to the date when the intention was found and expressed. However, this Court observed that between these two dates, that is, of expression of intention and of bringing it to the knowledge of the persons affected, several eventualities were possible whereby, vested rights might be created in other persons; and if the

doctrine of relation back was invoked without any limitation, the vested rights so created would be affected. In that context, this Court held that the doctrine should not affect the vested rights and such a limitation was being placed to meet with the given contingency.

19.1. It is difficult to find any application of the aforesaid enunciation to the question at hand. It remains trite that when a suit or appeal is dismissed in default and is restored after the Court is satisfied on the cause shown for default, such restoration would revive the proceedings to their status before default dismissal; and the doctrine of relation back would come into play in the manner that the proceedings shall continue in their original status, unless otherwise stated in the order of restoration or coming out by necessary implication. The principles stated in ***Addagada Raghavamma*** (supra) do not apply to the present case; and the reference to this decision remains entirely inapposite for the present case.

20. Similarly, reliance on certain observations in the minority opinion in the case of ***Vareed Jacob*** (supra), could only be disapproved as being rather misdirected.

20.1. In that case, the relevant background aspects were that in a suit for partition (Civil Suit No. 332/1122), the final decree was passed on 21.05.1964 whereunder, defendant No. 6 was granted recovery of certain items. On 25.06.1969, the defendant No. 3 in the said suit filed another suit, being Suit No. 209 of 1969, for setting aside the decree dated 21.05.1964. In the later suit, on 25.06.1969, the Court issued a temporary injunction restraining the decree-holder from executing the decree dated 21.05.1964. On 02.04.1973, the said Suit No. 209 of 1969 was dismissed in default. However, it was restored on 20.12.1974 and then, was dismissed on merits on 21.03.1975. The appeals there against were also dismissed by the first Appellate Court and by the High Court. Then, on 18.03.1981, an execution petition was filed, seeking execution of the decree dated 21.05.1964 in Suit No. 332/1122 wherein, the judgment-debtor raised the objection of limitation with the submissions that the execution petition was not filed within 12 years from the date of decree, i.e., 21.05.1964. The Executing Court as also the High Court held that the decree-holder was precluded from executing the decree during the period 25.06.1969 to 21.03.1975, i.e., the date when temporary injunction was granted in Suit No. 209 of 1969 and until that suit was finally dismissed on merits; and if that period was excluded, the execution

A petition was well within time. The question that arose in appeal before a 3-Judge Bench of this Court was as to whether there was an automatic revival of interlocutory orders with the restoration of the suit.

20.2. In relation to the aforesaid question, the learned Judges forming majority referred to several decisions to hold that the question, B as to whether restoration revives ancillary orders passed before dismissal of the suit, would depend upon the terms in which order of dismissal is passed and the terms in which the suit is restored. It was noticed that in previous decisions, it had been held that interlocutory orders passed before dismissal would stand revived along with the suit when dismissal is set aside and the suit is restored, unless the Court expressly or by implication C excludes the operation of such interlocutory orders; or if there was any alienation in favour of a third party during the interregnum between dismissal and restoration. In the given case, the majority held that in computing the period of limitation for execution of the decree, the decree-holder was entitled to exclude the period between the date of passing of D an order of temporary injunction, that is, 25.06.1969 and final date of dismissal of the suit, that is, 21.03.1975. On the other hand, the learned Judge expressing minority opinion pointed out the distinction between supplemental proceedings and incidental proceedings in the scheme of the Code of Civil Procedure and opined that a construction preserving the rights of the parties pending adjudication must be allowed to operate E and an interlocutory order which loses its force by dismissal of the suit may not revive on restoration, unless expressly directed.

20.3. Much emphasis is laid on behalf of the appellant on the observations in the minority opinion as regards the issue pertaining to legal treatment of the rights accrued in the interregnum. In our view, any F attempt to read the minority opinion as laying down independently a distinct principle of law would not be a correct application of the law governing precedents. The submissions are not correct factually either, when we read the separate opinions holistically. The majority opinion is clear and categorical where the principles stated in several decisions of G High Courts have been noticed with approval, while holding that the decree-holder was entitled to exclude the entire period during which temporary injunction was in operation; and it was obviously taken that when a suit, which had been dismissed in default, stood restored, the interlocutory order of temporary injunction was also restored because nothing to the contrary was indicated in the order of default dismissal or H the order of restoration.

20.4. We need not elaborate that in the matters relating to divergence of views in the Bench, it is the view of the majority that prevails and is to be taken as laying down binding principles and declaration of law by this Court in terms of Article 141 of the Constitution of India. It is too far stretched to contend, as attempted on behalf of the appellant, that any observation occurring in the minority opinion as regards any question or issue which has not been dealt with by the majority, may be read as having force of law or persuasive value. The submissions are not correct and deserve to be rejected.

21. We may also observe that the substance of the submission sought to be based on the aforesaid decisions in ***Addagada Raghavamma*** and ***Vareed Jacob*** is that vested rights are required to be protected. This submission proceeds on a fundamental fallacy that on default dismissal of the appeals filed by the respondent company under Section 37 of the Act of 1996, some vested right was created in the appellant in its capacity as an operational creditor. The real issue in the present case is about the "pre-existing dispute" as regards the money sought to be claimed by the operational creditor; and when pendency of the appeal is admittedly answering to the description of pre-existing dispute, its default dismissal could only be regarded as a partial eclipse, which momentarily puts the dispute in hibernation. Of course, there could be a case where restoration is not applied for and there could also be a case where restoration is declined, which might put an effective end to the dispute but, when restoration of the appeal is granted, it definitely re-activates the dispute. In fact, for the purpose and in the scheme of the Code, even pendency of an application for restoration is sufficient to bring the matter within the four corners of "pre-existing dispute".

22. We are further clearly of the view that the applications moved by the appellant for initiation of CIRP were required to be rejected in terms of Section 9(5)(ii)(d) of the Code which mandates such rejection if a notice of dispute had been received by the operational creditor or there is record of dispute in the information utility. Both the features are present in this case. The respondent company had unambiguously responded to the notices sent by the appellant within 10 days with the assertions that the applications for restoration of appeals were pending in the High Court, which were filed much before the receipt of demand notices and with advance notice to the appellant.

A 23. It is also significant to notice that as on the very day of filing of the applications under Section 9 by the appellant, i.e., 02.03.2020, the appeals were indeed restored by the High Court. The NCLAT took note of the fact that the applications, though sworn on 29.02.2020, were filed only on 02.03.2020. Thus, a wishful attempt of the appellant to use the default dismissal of appeals for initiation of CIRP had also lost its ground B on the date of filing of the applications under Section 9 of the Code. The NCLT had proceeded from an altogether wrong angle and even while passing the order on 30.09.2020, did not pause to consider that the appeals stood restored on the date of filing of the applications under Section 9 and therefore, even the hyper-technical stance of the appellant was also C knocked out. The NCLT had, in fact, totally misconstrued the clear and emphatic expositions in ***K. Kishan*** (supra).

24. For what has been observed and discussed hereinabove, we are satisfied that the Appellate Tribunal (NCLAT) has rightly set aside the orders passed by the Adjudicating Authority (NCLT) and has rightly D closed the proceedings against the respondent company. There is absolutely no reason to consider any interference at the instance of the appellant.

25. Accordingly, these appeals fail and are dismissed. All pending applications also stand disposed of.

Ankit Gyan Appeals dismissed.