

**NATIONAL COMPANY LAW APPELLATE TRIBUNAL**

**PRINCIPAL BENCH, NEW DELHI**

**COMPANY APPEAL (AT) (INSOLVENCY) No.194 of 2022**

(Arising out of Order dated 15.02.2022, passed by National Company Law Tribunal, New Delhi, Court-III, in C.P. (IB)No.- 529/ND/2021)

**IN THE MATTER OF:**

**Omega Laser Products B.V.**

**Having its registered office at**

**Chroomsteden 2**

**7547TL Enschede (Netherlands)**

**Through its Authorized Representative**

**HarmJan Oonk**

**R/o Topaasstraat 20**

**7548CL Enschede (Netherlands)**

**...Appellant**

**Versus**

**1. Anil Agrawal**

**S/o Bajinath Agrawal**

**R/o Flat No. F-1201**

**Prateek Stylome,**

**Sector 45, Noida,**

**Uttar Pradesh – 201301**

**Email: [anilagrwal33@gmail.com](mailto:anilagrwal33@gmail.com)**

**...Respondent No. 1**

**2. Omega Icehill Pvt. Ltd.**

**Having its registered office at**

**39, First Floor, Raghu Shree Market,**

**Ajmeri Gate, Delhi – 110006**

**Through Manoj Sehgal IRP**

**R/o Flat No 304, Tower 5, Ansal Valley,**

**View Estate Gwal Pahadi,**

**Gurgaon, Haryana 122003.**

**...Respondent No. 2**

**For Appellant:**

**Mr. Arun Kathpalia, Sr. Advocate with  
Sarojanand Jha, Mr. Karan Sharma, Mr.  
Suraj Malik, Mr. Vineet Dwivedi,  
Advocates.**

**For Respondent No. 1:**

**Mr. Rohit Sharma, Mr. Arju Chaudhary,  
Mr. Rounak Nayak, Advocates for R-1.**

**WITH**

**COMPANY APPEAL (AT) (INSOLVENCY) No. 195 of 2022**

(Arising out of Order dated 15.02.2022, passed by National Company Law Tribunal, New Delhi, Court-III, in C.P. (IB) No.- 529/ND/2021)

**IN THE MATTER OF:**

**Tushar Kant Jindal  
Director (Suspended Board)  
Omega Icehill Pvt. Ltd. & Ors.  
39, First Floor, Raghu Shree Market,  
Ajmeri Gate, Delhi – 110006.**

**...Appellant**

**Versus**

**1. Anil Agrawal  
S/o Bajinath Agrawal  
R/o Flat No. F-1201  
Prateek Stylome,  
Sector 45, Noida,  
Uttar Pradesh – 201301  
Email: [anilagrawal33@gmail.com](mailto:anilagrawal33@gmail.com)**

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39, First Floor, Raghu Shree Market,  
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Through Manoj Sehgal IRP  
Flat No 304, Tower 5, Ansal Valley,  
View Estate Gwal Pahadi,  
Gurgaon, Haryana 122003.**

**...Respondent No. 2**

**For Appellant:**

**Mr. Ritin Rai, Sr. Advocate with Kavita Sarin, Sarika Raichur, Mr. Nishant Menon, Mr. Rajat Gava, Advocates.**

**For Respondent No. 1:**

**Mr. Rohit Sharma, Mr. Arju Chaudhary, Mr. Rounak Nayak, Advocates for R-1.**

**J U D G E M E N T**

**[Per: ShreashaMerla, Member (T)]**

1. Aggrieved by the Impugned Order dated 15/02/2022, passed by the Learned Adjudicating Authority (National Company Law Tribunal, New

Delhi, Court-III), in C.P. (IB) No. 529/ND/2021, 'M/s. Omega Icehill Pvt. Ltd./the 'Corporate Debtor' in *Company Appeal (AT) (Insolvency) No. 194/2022* and 'Mr. Tushar Kant Jindal'/the suspended Director of the 'Corporate Debtor' in *Company Appeal (AT) (Insolvency) No. 195/2022*, both preferred this Appeal under Section 61 of the Insolvency and Bankruptcy Code, 2016, (hereinafter referred to as 'The Code'), dissatisfied by the Admission of the Corporate Insolvency Resolution Process (CIRP) in an Application filed by the Respondent/the 'Operational Creditor', under Section 9 of the Code.

**2.** Since both these Appeals arise out of a common Impugned Order and deal with common facts, they are being disposed of by this common Order.

**3.** The facts in brief are that Mr. Anil Agrawal/'Operational Creditor'/Managing Director (hereinafter referred to as the 'MD'), filed an Application under Section 9 of the Code on the ground that he was entitled to Rs.3Lakhs/- per month as remuneration from 16/01/2010, which was revised with effect from 01/08/2014 to Rs.4Lakhs/- per month, but the payment was also short of the agreed sum. It was stated that the shortfall in the salary of the MD would be paid when the financial position of the Company improves. While so, in May 2019, the MD was removed by the 'Corporate Debtor' with effect from 14/05/2019 without clearing his salary dues.

**4.** Learned Sr. Counsel Mr. Arun Kathpalia submitted that, the MD also filed a Petition under Section 241 & 242 of the Companies Act, 2013, (hereinafter referred to as 'The Act') alleging Oppression and Mismanagement against the Corporate Debtor Company; that the Appellant

is a solvent Company and nothing is payable; that there was no signed Board Resolution increasing the salary from Rs.3Lakhs/- to Rs.4 Lakhs/- to Rs.5Lakhs/- or to Rs.7.5Lakhs/- as claimed by the MD in his Section 9 Application; that the MD was discharged on 15/05/2019; and drew our attention to the amounts of salary dues claimed in the Application:

- Rs.3 Lakhs/- per month from 16/01/2010 to 30/06/2010 totalling to Rs.16,50,000/-.
- Rs.79,26,000/- is the shortfall in the Salary for the period 01/07/2010 to 31/07/2014.
- Rs.4Lakhs/- per month from 01/08/2014 to 31/03/2016 totalling to Rs.19,19,000/-.
- Rs.5Lakhs/- per month for the period 01/04/2016 to 31/03/2018 totalling to Rs.40,40,000/-.
- Rs.7,50,000/- for the period 01/04/2018 to 14/05/2019 totalling to Rs.63,52,000/-.

**5.** Learned Counsel also drew our attention to the Financial Statements for the year ending 2011-2018, which were all signed by the MD himself. It is argued that the Statement made by the MD that he was not drawing his full salary during the period when the Corporate Debtor Company was undergoing a financial crunch is factually incorrect as the 'payslip' for the month of April 2019 shows that the MD was drawing a gross salary of Rs.3,43,100/- which also establishes that the MD's salary was never fixed at Rs.4Lakhs/- per month or Rs.5Lakhs/- per month. The net salary amount payable in this payslip of April 2019 is Rs.2,40,605/- and is reflected in the

HDFC Bank Statement of the MD which proves there are no dues payable to him.

6. Learned Counsel denied that the MD was not drawing full salary and further contended that he had compensated by enrolling his wife and daughters on the rolls of the Company without seeking any approval of the Board. Pursuant to the Reply of the Appellant to the Demand Notice under Section 8 of the Code, the MD had issued another Demand Notice dated 07/08/2021 wherein the amounts claimed for the period 16/01/2010 to 31/07/2014 at Rs.3Lakhs/- per month totalling to Rs.66,58,000/- whereas the amount claimed was Rs.86Lakhs/- earlier. It is also stated that the MD has sought to calculate the alleged shortfall in his salary by taking an imaginary figure of Rs.4Lakhs/- per month which was neither approved nor agreed to nor is it supported by any documents such as an Employment Agreement or a Board Resolution. Learned Counsel placed reliance on the following table in support of his argument that the entire amount has been paid and nothing is 'due and payable':

<b>Period Ref.</b>	<b>Period</b>	<b>Salary Payable (INR)</b>	<b>Salary Paid (INR)</b>
Period 1	16.01.2010 to 31.07.2014	67,72,974/-	67,72,974/-
Period 2	01.08.2014 to 31.03.2016	62,00,000/-	62,00,000/-
Period 3	01.04.2016 to 31.03.2018	86,50,000/-	86,50,000/-
Period 4	01.04.2018 to 31.03.2019	43,80,000/-	43,80,000/-
Period 5	01.04.2019 to 14.05.2019	5,35,334/-	5,35,334/-

7. It is also submitted that the Certificate issued by the Independent Chartered Accountant M/s. K.C. Khanna and Co. dated 20/10/2021 was

never considered by the Adjudicating Authority. Learned Counsel argued that there were discrepancies in both the notices sent under Section 8 of the Code; that Part IV of the Application filed under Section 9 of the Code shows that the principal amount of the alleged 'Operational Debt' is Rs.1,29,34,187/- out of which, Rs.96Lakhs/- is the amount shown as due for the period 16/01/2010 to 31/07/2014, which amount is 'barred by Limitation' as the Application was filed on 27/08/2021. Article 7 of the Limitation Act, 1963, which deals with the 'wages accrued' clearly specifies that this Application is 'barred by Limitation'. The amount shown as 'due' for the period 01/08/2014 to 31/03/2016 is Rs.18Lakhs/- and this too is beyond the three year period.

**8.** Learned Sr. Counsel Mr. Kathpalia stressed that only Rs.9.50Lakhs/- is the shortfall which may be 'due and payable' for the period to 01/04/2016 to 31/03/2018 even if the contention of the MD is considered at that Rs.4Lakhs/- per month was indeed payable, even then this amount is less than the threshold of Rs.1Crore/-. The Adjudicating Authority has erroneously admitted the Application and initiated the CIRP Process.

**9.** It is argued by the Learned Sr. Counsel that the letter dated 01/08/2014 has not been signed by the Appellant; that the Minutes of discussion dated 12/05/2016 is not an AGM or a Board Meeting of the Appellant and that the communication/emails do not admit any quantum of salary. It is asserted that the Adjudicating Authority has only assumed 'default', has not given any finding on 'default'; has not addressed to the 'Pre-Existing Dispute' between the parties; did not considered that the

claims were 'barred by Limitation' and has given no reasons for observing that the alleged debt is a continuing one.

**10.** Learned Sr. Counsel to buttress his argument has placed reliance on the Judgement of the Hon'ble Supreme Court in 'Sakal Deep Sahai Srivastava' Vs. Union of India & Anr., (1974) 1 SCC 338, in which the Hon'ble Apex Court while referring to the Limitation Act, 1963 regarding arrears of salaries observed as follows:

*"8. The only question of some difficulty raised before us is whether Article 102 or Article 120 of the Limitation Act of 1908 would apply to the case. After having heard the attractive arguments of Mr. Yogeshwar Prasad, we have no doubt that a good deal can be said in favour of the contention that a claim for arrears of salary is distinguishable from a claim for wages. But, our difficulty is that the question appears to us to be no longer open for consideration afresh by us, or, at any rate, it is not advisable to review the authorities of this Court, after such a lapse of time when, despite the view taken by this Court that Article 102 of the Limitation Act of 1908 was applicable to such cases, the Limitation Act of 1963 had been passed repeating the law, contained in Articles 102 and 120 of the Limitation Act of 1908, in identical terms without any modification. The Legislature must be presumed to be cognizant of the view of this Court that a claim of the nature before us, for arrears of salary, falls within the purview of Article 102 of the Limitation Act of 1908. If Parliament, which is deemed to be aware of the declarations of law by this Court, did not alter the law, it must be deemed to have accepted the interpretation of this Court even though the correctness of it may be open to doubt. If doubts had arisen, it was for the Legislature to clear these doubts. When the Legislature has not done so, despite the repeal of the Limitation Act of 1908. and the enactment of the Limitation Act of 1963 after the decisions of this Court, embodying a possibly questionable view, we think it is expedient and proper to overrule the submission made on behalf of the appellant that the correctness of the view adopted by*

*this Court in its decisions on the question so far should be re-examined by a larger Bench.*

.....

*11. The appellant's contention, however, is that, even if suit barred by time, he would get three years worth of arrears of salary as within time if Article 120 (instead of Article 102) Limitation Act of 1908 was applied and each failure to pay the monthly salary due constituted a fresh cause of action. We cannot accept this view as we have, for reasons already given, held that Article 102 of the Limitation Act, 1908, was correctly applied.*

*12. We think that the High Court was right in treating the order of reversion passed against the petitioner to be void and inoperative, Or "non est". The result was that no declaration was needed for the purpose of enforcing a claim which fell within 3 years. Consequently, only, the amount which fell within three years of the suit filed could be decreed."*

**11.** Learned Counsel, Mr. Sharma appearing for the Respondent submitted that for the first 5 years from 2010 to 2015 as the Company was suffering from financial losses, the MD had not claimed his full salary. Subsequently, the Company had become profitable from 2016 having entered into a Joint Venture Agreement and the MD was promised a higher salary by the Dutch counterpart. On 06/05/2019, the Dutch partner was scheduled to come to India to ink the Agreement but on the same day, the MD was unceremoniously removed.

**12.** The Learned Counsel placed reliance on the Minutes of discussion in the Shareholders Meeting dated 12/05/2016, wherein it is stated that the transactions between the three Companies i.e. Omega Group, Omega Engineering and Omega Icehill Pvt. Ltd. need to be settled by actual transfer of funds as per legal roles and that *'Mr. Anil Agrawal also took lesser salary than what was agreed between the Shareholders and the statement of the*



same is enclosed. The statement will be checked and confirmed by Omega. This needs to be paid to him as and when the Company cash position improved and in the definite period of time. Besides, the salary will be reviewed with effect from 01/04/2016 as soon as the Agreement will be reached on the JV Agreement and budget'. He placed reliance on the statement of salary payable to the MD as on 12/05/2016 which is detailed as hereunder:

Statement of Salary Payable & Paid of Mr. Anil Agrawal on 12 May 2016

133

In Thousand					
Period	Month	Amount Payable	Amount Paid	Short Paid	Remarks
2009-10	15th Jan to 31st March	750	-	750	
2010-11	1st April to 31st March	3,600	1,472	2,128	
2011-12	1st April to 31st March	3,600	1,905	1,695	
2012-13	1st April to 31st March	3,600	1,296	2,304	
2013-14	1st April to 31st March	3,600	1,296	2,304	
2014-15	1st April to 31st July	1,200	805	395	
2014-15	1st August to 31st March	3,200	2,376	824	
2015-16	1st April to 31st March	6,000	3,705	2,295	
<b>Total</b>		<b>25,550</b>	<b>12,855</b>	<b>12,695</b>	

  
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13. Learned Counsel submitted that in the email dated 30/05/2016 sent by MD Mr. Leendert Stutvoet, it is stated as follows:

*“Salary was agreed for 3.6million until July 2014. I began work form 16<sup>th</sup> Jan 2010 but started taking payroll from July 2010 only and most of the difference is not on books. Form August 2014 it was raised to 4.8 million although I had asked for Rs.6 million. The 6 million part was to be implemented from April 2015. However, in April 2015 due to other developments, this issue was not discussed and since the management of Company and finances was on my lone shoulders I let is stay that way. I think in all fairness, this needs to be implemented from April 2015. You can check this issue with Herman. I shall send you a copy of minutes.”*

14. Further, in the email dated 26/05/2016, the salary of the MD was increased to Rs.44Lakhs/- per year from Rs.36Lakhs/- and the Learned Counsel based his argument on the following contents of the emails:

From: Leendert Stutvoet [mailto:l.stutvoet@omega-group.nl]  
Sent: Thursday, May 26, 2016 5:16 PM  
To: 'Anil Agrawal'  
Cc: Jan de Jong  
Subject: follow up board meeting

Dear Anil,

As discussed in the board meeting I asked Jan to check the numbers we discussed regarding the intercompanies between Omega Icehill and OTP and South Africa, and the salary that the JV still owes you.

Two questions:

- Can you indicate which of the items on the intercompany overview are on the balance sheet of Omega Icehill, and which are not? I supposed that the ones that are on the balance sheet should be taken care of first.
- From the salary overview I understand that your original salary was Rs 3,6m. This was increased as per financial year 2014-2015 to Rs4,4m? I remember that you told me that this was then discussed, but that another increase, that was supposed to be discussed the next year was not implemented. Now I see Rs 6m for 2015-2016. Was this agreed between the shareholders? My notes on this are not clear, and of course there are no board meeting minutes that clarify this. Can you tell me what was agreed?

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*(Emphasis Supplied)*

15. Learned Counsel Mr. Sharma submitted that in the Minutes of the Meeting of the Board of Directors of Omega Icehill Pvt. Ltd. held on 19/03/2018 in item 7 & 8 referring to 'Repayment of Loans', and 'Review of Salaries' it was specifically stated that the MD's remuneration and perks needed a revision and that his salary arrears were required to be paid. The email dated 03/07/2018 sent by the MD to the Dutch Company also sought in item 8, a 'proposal' from his side, that the remuneration level should be Rs.7,50,000/- per month. In support of his argument that the Company was going through a financial crunch and that was the main reason that why the MD did not draw his full salary, the Counsel for the Respondent relied on the Minutes book dated 09/07/2018 wherein it was stated that there was a

shortfall in the finances of the MD and the stakeholders should take the approval of the Board for further review.

**16.** With respect to Limitation, Learned Counsel contended that the salary arrears were not paid since 2010 onwards and therefore construes a 'continuing cause of action' and viewed from any angle, it cannot be said to be 'barred by Limitation'. With respect to the table relied upon by the Learned Counsel for the Appellant, Learned Counsel submitted that in the last column referring to Notice period of three months, for the period 15/05/2019 to 15/08/2019 an amount of Rs.11,01,279/- was indeed paid which is almost Rs.4Lakhs/- per month and that this evidences that the MD's salary was agreed and accepted to be Rs.4Lakhs/- per month.

**17.** It was also submitted that the annexures filed by the Appellant were not part of the record before the Adjudicating Authority and that the Shareholders Meeting held on May, 2016 read together with the emails established that salary was initially fixed at Rs.3Lakhs and was thereafter increased to Rs.4Lakhs/- and later promised to be increased to Rs.7.5Lakhs/- per month.

**Assessment/Findings:**

**18.** Both sides filed their Written Submissions.

**19.** At the outset, we address ourselves to the issue whether the 'Claims' in the Application filed under Section 9 of the Code, is 'barred by Limitation'.

**20.** A perusal of Part IV of the Application filed on 27/08/2021 shows that an amount of Rs.1,29,34,187/- is claimed to be outstanding towards 'salary dues' and Rs.53,03,016/- towards 'Simple Interest'@ 18% interest thereon.

21. It is seen from the Demand Notice dated 07/08/2021 that the claims of the 'salary dues' pertain to the following periods:

<b>S. No.</b>	<b>Period</b>	<b>Amount Claimed</b>
1.	16.01.2010 to 31.07.2014	Rs.96,92,000/-
2.	01.08.2014 to 31.03.2016	Rs.18,00,000/-
3.	01.04.2016 to 31.03.2016	Rs.9,50,000/-
4.	01.04.2018 to 31.03.2019	Rs.4,20,000/-
5.	01.04.2019 to 14.05.2019	Rs.71,529/-

22. At this juncture, it is required to be seen as to whether there is any 'acknowledgement of debt'/'salary dues' to fall within the ambit of Section 18 of the Limitation Act, 1963, which reads as follows:

**“18. Effect of acknowledgment in writing,-**

*(1) Where, before the expiration of the prescribed period for a suit or application in respect of any property or right, an acknowledgment of liability in respect of such property or right has been made in writing signed by the party against whom such property or right is claimed, or by any person through whom he derives his title or liability, a fresh period of limitation shall be computed from the time when the acknowledgment was so signed.*

*(2) Where the writing containing the acknowledgment is undated, oral evidence may be given of the time when it was signed; but subject to the provisions of the Indian Evidence Act, 1872 (1 of 1872), oral evidence of its contents shall not be received.*

*Explanation.-For the purposes of this section,-*

*(a) an acknowledgment may be sufficient though it omits to specify the exact nature of the property or right, or avers that the time for payment, delivery, performance or enjoyment has not yet come or is accompanied by a refusal to pay, deliver, perform or permit to enjoy, or is coupled with a claim to set off, or is addressed to a person other than a person entitled to the property or right,*

*(b) the word "signed" means signed either personally or by an agent duly authorised in this behalf, and*

*(c) an application for the execution of a decree or order shall not be deemed to be an application in respect of any property or right.”*

**23.** It is significant to mention that the Learned Counsel for the Respondent Mr. Sharma has placed reliance on the Minutes of the Meeting dated 19/03/2018 and referred to items 7 & 8 which deal with ‘Repayment of Loan’ and ‘Review of Salaries’ respectively, in support of his argument that there was always a ‘promise’ to pay the MD’s salary arrears. Learned Counsel in support of his argument that the ‘Claims’ were not ‘barred by Limitation’ as the Appellants have never denied the MD’s ‘Claim’ to arrears of salary, relied on the Minutes of discussion dated 12/05/2016 and Minutes of the Meeting of Board of Directors held on 19/03/2018 and on 08/09/2019 and argued that the statements in these Meetings all acknowledged that the MD’s salary of arrears were required to be paid.

**24.** It is seen from the material on record that the Minutes dated 09/07/2018 in column 2.1.4, it is clearly stated as hereunder:

*“2.1.4 Approval of minutes of the last board meeting of the board of directors*

*Minutes of the last board meeting have NOT been discussed and specifically NOT approved by the chairman. Furthermore, Mr. Oonk would like to have noted that the minutes of previous meeting(s) have NOT been received by them and are also NOT approved.”*

**25.** This evidences that there is no ‘specific approval’ either of the payment of arrears or of any ‘fixation of the MD’s remuneration’ or increase of his salary/perks. It is also relevant to note that there is no crystallised quantum of amount which can be claimed as salary/remuneration fixed by

the Board of Directors as contemplated under Section 196 of the Companies Act, 2013. The contention of the Learned Counsel Mr. Sharma that the cause of action did not arise till the dispute arose is untenable, keeping in view, that the claims date back to 2010 and there is no record of disputes having arisen at that point of time. The contents of the emails relied upon by the Learned Counsel for the Respondent show that there has been a proposal by the MD for increase in salary, which was never definitively concluded as 'accepted' even in the email communication. One such email dated 26/05/2016 clearly reads *'I understand your original salary was Rs.3.6M then was increase as per Financial Year 2014-16 to Rs.4.4M. I remember that you told me that this was then discussed but that another increase that was supposed to be discussed the next year was not implemented. Now I see Rs.6M for 2015-16, was this agreed between the Shareholders? My notes on this, are not clear, and of course there are no Board Meeting Minutes that clarify this. Can you tell me what was agreed?'* From this correspondence it is clear that it was a 'Proposal' which was still under discussion and that there was no Resolution passed at a Board Meeting accepting the same. Further, this communication is from one Mr. Leendert Stutvoet who is not the authorized representatives of the Corporate Debtor Company. Be that as it may, even if he is representing the Dutch Company, (a part of the JV Agreement), the statement made in the email is neither conclusive nor binding as it is not a Board decision. Para 8 of the Minutes of discussion of the Shareholders dated 12/05/2016 is also not convincing. The communication dated 01/08/2014 form is signed by one

Mr. Wimde Bergh representing Omega Thermo Products, one of the Shareholders of the Appellant Group Companies.

**26.** Article 40 of the Articles of Association of the Appellant Company stipulates that the remuneration of the MD would be fixed by Board of Directors from time to time. The said Article reads as follows:

*“40. The Managing Director may be paid such remuneration as may, from time to time, be determined by the Board and such remuneration as any be fixed by ways of salary or commission or participation in profits or partly in one way or partly in another subject to the provisions of the Companies Act, 1956.”*

**27.** It is evident from this Article that remuneration ought necessarily be passed by Resolution in Board Meeting for it to have any binding effect.

**28.** We are of the considered view that the emails, the correspondence relied upon by the Learned Counsel for the Respondent do not give any definitive quantum of salary to have been accepted by way of any Resolution by the Board of Directors, to fall within the ambit of the definition of ‘acknowledgement of debt’ as contemplated under Section 18 of the Limitation Act, 1963. Therefore, this Tribunal is of the earnest view that the Section 9 Application filed on 27/08/2021 is ‘barred by Limitation’ as the claims of Rs.96,92,000/- and Rs.18,00,000/- pertain to the period prior to 31/03/2016 and more than three years have lapsed since.

**29.** Now we address ourselves to the issue of any ‘Pre-Existing Dispute’, existing between the parties on the touchstone of the ratio of the Hon’ble Supreme Court in ‘Mobilox Innovations (P) Ltd.’ Vs. ‘Kirusa Software Pvt. Ltd.’ (2018) 1 SCC 353, in which it is held 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.”

.....

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

**30.** It is seen from the record that the remuneration of the MD is a ‘disputed question of fact’. It is not within our domain under IBC to ‘decide the issue of the fixation of the salary of the MD’, but to ascertain if there is any ‘Dispute’ regarding the issue. Having regard to the emails/correspondence and the Minutes on record, we are of the earnest



view that the 'Dispute' raised is not a feeble legal argument nor is it a spurious one but one which is supported by evidence.

**31.** We are of the considered view that the Adjudicating Authority has not addressed either to the question of claims having been time barred nor to the issue of the existence of a 'Pre-Existing Dispute' between the parties.

**32.** For all the foregoing reasons the Impugned Order dated 15/02/2022 passed by the Adjudicating Authority is set aside and both these Appeals are allowed. Needless to add, the amount deposited by the Appellant in *Company Appeal (AT) (Insolvency) 195 of 2022* in compliance of our Order dated 22/02/2022 shall be refunded to the Appellant.

**[Justice Ashok Bhushan]**  
**Chairperson**

**[Ms. Shreeshha Merla]**  
**Member (Technical)**

**New Delhi**  
**10<sup>th</sup> May, 2022**  
*hīmanshu*