



An overview of cases under section 8 and 9 of the Insolvency and Bankruptcy Code, 2016

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An Overview of Cases Under Sections 8 and 9 of the Insolvency and Bankruptcy Code, 2016

-Evolution of the Concept of 'Dispute' under the IBC

INTRODUCTION

This Note provides an overview of the matters under Sections 8 and 9 of the Insolvency and Bankruptcy Code, 2016 ('IBC' or 'the Code') before the Hon'ble Supreme Court of India and Hon'ble National Company Law Appellate Tribunal ('NCLAT') adjudicated upon between 1 January 2019 to 18 March 2020 ('Note').

In the table below, the cases have been divided on the basis of the forum which has passed it, (A) Supreme Court and (B) NCLAT. The cases are recorded in ascending order (old to new).

Before advertizing to the table below, for the sake of clarity and better understanding, the relevant provisions of IBC are highlighted below under point 2 of this Note.

APPENDIX OF RELEVANT PROVISIONS OF IBC

- **Section 5(6)**

"dispute" includes a suit or arbitration proceedings relating to—

- (a) the existence of the amount of debt;
- (b) the quality of goods or service; or
- (c) the breach of a representation or warranty

- **Section 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.
- (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—
 - a. existence of a dispute, if any, and record of the pendency of the suit or arbitration proceedings filed before the receipt of such notice or invoice in relation to such dispute;
 - b. the repayment of unpaid operational debt—
 - 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
 - ii. by sending an attested copy of record that the operational creditor has encashed a cheque issued by the corporate debtor.

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

- **Section 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.
 - (2) The application under sub-section (1) shall be filed in such form and manner and accompanied with such fee as may be prescribed.
 - (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;
 - 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; and
 - d. such other information as may be specified.
 - (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.
 - (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 repayment 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 repayment 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.

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

COMPENDIUM OF CASES

This Section is divided into two parts. Part (A) encapsulates the decisions of the Hon'ble Supreme Court, and Part (B) encapsulates the decisions of the Hon'ble NCLAT.

(A) SUPREME COURT

| S. NO | CASE NAME | CITATION | RELEVANT PARAGRAPH(S) | RELEVANCY |
|-------|--|-------------------|--|---|
| 1. | Mobilox Innovations Private Limited v. Kirusa Software Private Limited | (2018) 1 SCC 353 | <p>P 33: "The Scheme under the Section 8 and 9 of the Code appears to be that an operational creditor.....</p> <p>.....Also if any disciplinary proceeding is pending against any proposed resolution professional, the application may be rejected."</p> | A dispute shall be relatable to <u>the existence of the amount of the debt, quality of good or service or breach of a representation or warranty.</u> |
| 2. | Macquarie Bank Limited v. Shilpi Cable Technologies Limited | (2018) 2 SCC 674 | <p>P 13: "The first thing to be noticed on the conjoint reading of Section 8 and 9.....</p> <p>.....pre-existing dispute or repayment of the unpaid operational debt."</p> <p>P 25: "It is unnecessary to further refer to the arguments.....</p> <p>.....ought to be construed in the manner indicated by Dr. Singhvi."</p> | Demand Notice issued by an Advocate/Lawyer without proper authorization from the Creditor or its board cannot be treated as a notice under section 8 of the Code. Accordingly, the petition under section 9 at the instance of such creditor is not maintainable. |
| 3. | Transmission Commission of Andhra Pradesh Limited v. Equipment Conductors and Cables Limited | (2019) 12 SCC 697 | <p>P 19: "In a recent judgment of this court in Mobilox.....</p> <p>.....authority has to reject the application."</p> | A dispute shall be relatable to <u>the existence of the amount of the debt, quality of good or service or breach of a representation or warranty.</u> |

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| 4. | K. Kishan v. Vijay Nirman Company Private Limited | (2018) 17 SCC 662 | <p>P 19: "After referring to Section 8,</p> <p>..... as the case may be."</p> <p>P 22: "Following this judgment,</p> <p>....debt owed does not exist."</p> <p>P 27: "We repeat with emphasis.....</p> <p>.....has taken place."</p> | <p>If notice of dispute (reply to demand notice) has been received by the Operational Creditor or there is record of dispute in the information utility (if any). Then 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.</p> <p>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.</p> <p>A suit, arbitration, any proceeding or application pending before any competent court of law or authority prior to the issuance of demand notice can be relied upon to hold that there is a 'dispute' raised by the corporate debtor.</p> |
| 5. | Vijay Kumar Jain v. Standard Chartered Bank | CIVIL APPEAL NO.8430 OF 2018 | <p>P 11: "This Court in Mobilox Innovations (supra) stated:.....</p> <p>..... would arise if it is not read as "or""</p> | <p>A dispute shall be relatable to <u>the existence of the amount of the debt, quality of good or service or breach of a representation or warranty</u>.</p> |

(B) NCLAT

| S. NO. | CASE NAME | CITATION | RELEVANT PARAGRAPH(S) | RELEVANCY |
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| 1. | Mukesh Agarwal v. RQS Engineering Pvt. Ltd. | 2019 SCC OnLine NCLAT 586 | P7: "In reply to the same, the 'Corporate Debtor'.....rightly been admitted by the Adjudicating Authority." | Defects and Deficiency in goods/services pointed out prior to delivery/raising of invoice amounts to pre-existence of dispute. |
| 2. | Naveen Kumar Dixit v. Jaswant International Private Limited and Anr. | 2019 SCC OnLine NCLAT 324 | P6: "Although the Appellant claims that the Adjudicating Authority... Order calls for no interference on our part." | Failure to appear before Adjudicating Authority despite proof of pre-existing dispute (whether supplied by way reply to demand notice or not) will have no bearing before the Appellate Adjudicating Authority. |
| 3. | Pedersen Consultants India Pvt. Ltd. v. Nitesh Estates Limited | 2019 SCC OnLine NCLAT 422 | P8: "From the aforesaid decision, it is clear that ... and is required to be admitted." P10: "From the aforesaid findings, it is clear that... there is pre-existence of dispute." P11: In the present case, as we have observed..... quantum of payment cannot be determined." | Dispute raised by a service recipient shall be pre-existing and shall not be merely raised for the sake of dispute to reply the demand notice received by it. |
| 4. | R. S. Fuel Pvt. Ltd. v. Ankit Metal & Power Ltd. | Company Appeal (AT) (Insolvency) No. 95 of 2020 | P4: "Therefore, it is clear that much prior to issuance of demand notice, the disputes..... The appeal is dismissed with aforesaid observations. No costs." | Dispute in relation to the amount of debt raised much prior to the issuance of demand notice to the Creditor will amount to pre-existing dispute. |
| 5. | Unistill | CA(AT)(Ins) No. 162 of | P7: "Considering the documents | Defects and Deficiency in goods/services pointed after |

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| | Alcoblends Pvt. Ltd. v. India Brewery & Distillery Pvt. Ltd. | 2019 | pointed out..... was pre-existing dispute when Section 8 Notice was issued." | delivery of demand notice will not amount to pre-existence of dispute. |
| 6. | iValue Advisors Pvt. Ltd. v. Srinagar Banihal Expressway Ltd. | CA(AT)(Ins) No. 1142 of 2019 | <p>P9: "We have heard Counsel for both sides and going through the matter..... (c) the breach of a representation or warranty""</p> <p>P11: "At present, nothing is shown that there was any pre-existing dispute..... as covered under the IBC, is attracted."</p> | A relief available under a parallel statute to a creditor would not amount to pre-existence dispute provided such relief is not concurrent to the scope of dispute defined under the Code. |
| 7. | Suman Chakraborty v. Anhui Technology Imp. & Exp. Co. Ltd. | CA(AT)(Ins) No. 1090 of 2019 | <p>P7: "Submission made by learned counsel for the Respondent..... under Section 8(1) is there any dispute."</p> <p>P8: "In the present case there being a pre-existingunder Section 9, there being a pre-existing dispute."</p> | A dispute relating to quality of product supplied by an entity communicated by the Corporate Debtor vide emails will amount to pre-existing dispute under the Code. |
| 8. | Shashank Keshav Kalkar v. Raychem RPG Private Limited & Anr. | CA(AT)(Ins) No. 1463 of 2019 | P2: "Learned Counsel for the Appellant submitted..... under Section 9 of the I&B code was maintainable." | A short supply of goods/material against the token advance received by an entity would not amount to pre-existence of dispute or dispute under the definition of the Code. A dispute shall be relatable to <u>the existence of the amount of the debt, quality of good or service or breach of a representation or warranty.</u> |

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| | | | | <p>For instance –</p> <p>P.O. of 100 units was raised by the Corporate Debtor and 20% advance of the 100 units was paid by the Corporate Debtor.</p> <p>The Creditor supplied 80 units and sent a demand notice against outstanding debt for 80 units, then Corporate Debtor cannot raise a dispute in light of shortage of supply of 20 units.</p> |
| 9. | Ved Contracts Pvt. Ltd. v. Pan Realtors Pvt. Ltd. | CA(AT)(Ins) No. 908 of 2019 | <p>P9: "Admittedly, notice under Section 8 of the Insolvency and Bankruptcy..... here was a pre-existing dispute."</p> <p>P10: "In 2018 (1) SCC 353 Mobilox Innovation..... illusory, the adjudicating authority has to reject the application."</p> <p>P11: "In the present case, applying the test... plainly, frivolous or vexatious."</p> | A dispute has to be pre-existent and prior to issuance of demand notice and not merely for the sake of making a dispute. |
| 10. | Sandvik Asia Private Limited v. The Indure Private Limited | CA(AT)(Ins)No. 737 of 2019 | <p>P12: "The Hon'ble Supreme Court in Mobilox Innovations..... illusory, the adjudicating Authority has to reject the Application".</p> <p>P15: "All these suggests that the debt in question.....the Adjudicating Authority has rightly rejected the Application."</p> | <p>If notice of dispute (reply to demand notice) has been received by the Operational Creditor or there is record of dispute in the information utility (if any). Then 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.</p> <p>Therefore, all that the Adjudicating Authority is to see at this stage is whether there is a plausible contention</p> |

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| | | | | which requires further investigation and that the "dispute" is not a patently feeble legal argument or an assertion of fact unsupported by evidence. |
| 11. | Ashok Raja v. Arun Kumar Gupta & Anr | CA (AT) (Insolvency) No. 1082-2019 | P2: "In so far as the application preferred by the..... Section 9 of the I&B Code preferred by 1st respondent." | A pending proceeding against the corporate debtor withdrawn subsequent to issuance of demand notice would amount to pre-existence of dispute under the Code. |
| 12. | Gandhar Oil Refinery (India) Ltd. v. Madhucon Sugar and Power Industries Ltd. | CA(AT)(Ins) No.1278 of 2019 | P4: "In the present case, we find that the Respondent..... which will affect the boiler efficiency." P5: "In an application under Section 9,..... Section 9 of the I&B Code." | A quality check/inspection report is evidence for the quality of material supplied and is therefore a basis for pre-existence of dispute. |
| 13. | India Trading Oil Company v. Abhinandan Dyeing Pvt. Ltd. | CA(AT)(Ins) No. 917 of 2019 | P4: "Although learned Counsel for Appellant is submitting..... not have made any payment there against." P7: "We cannot enter into the question..... erred in rejecting Section 9 application." | A discrepancy in amount of debt in terms of work order issued and the invoice raised is a prima-facie dispute relatable to <u>the existence of the amount of the debt</u> and hence, a pre-existence of dispute. |
| 14. | Naik Environmental Engineers Pvt. Ltd. v. Lucina Land Development Ltd. | CA(AT)(Ins)No. 543 of 2019 | P9: "We have gone through the Impugned Order..... and default on stage-wise basis unless admitted." | Pre-existing disputes between the Parties shall conform to the amount of debt claimed in the demand notice then only it shall be treated as a pre-existing dispute. A pre-existing dispute against a parallel transaction cannot be corroborated with the debt in question. |
| 15. | Ami Alloys v. Hi Tech Butterfly Valves Pvt. Ltd. | CA(AT)(Ins) No. 1388 of 2019 | P2: "Learned Counsel for the Appellant submits The Appeal is dismissed. No costs." | A suit for recovery of dues filed prior to the commencement of the Code would constitute a pre-existing dispute between the Parties under the Code. |

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| 16. | D. Satish Babu v. Optiemus Infracom Limited & Anr. | CA(AT)(Ins)No.623 of 2019 | P15: "Before Adjudicating Authority or before us..... parties and/or their sister concerns." | Where the Corporate Debtor is a sub-contractor who has further sub-contracted the supply of material cannot dispute the existence of debt on account of the arrangement with the principle contractor. |
| 17. | Mohit Minerals Limited v. Shree Rama Newsprint Limited | CA(AT)(Ins)No. 620 of 2019 | P14: "Judgment of the Hon'ble Supreme Court in the matter of..... not by hypothetical or spurious." P18: "The Hon'ble Supreme Court upholding..... pending between the parties." | A dispute shall be relatable to <u>the existence of the amount of the debt, quality of good or service or breach of a representation or warranty.</u> |
| 18. | Mr. P.M Mahendran v. Mr. Tharuvai Ramachandran Ravichandran & Ors. | CA(AT)(Insolvency)No. 642 of 2019 | P12: "From all the correspondences between the..... fact unsupported by evidence."" P13: "From the aforesaid correspondences..... appeal needs to be allowed." | A dispute shall be relatable to <u>the existence of the amount of the debt, quality of good or service or breach of a representation or warranty.</u> |
| 19. | Kline Technical Consulting LLC v. Central Electronics | CA(AT)(Ins)No. 736 of 2019 | P5: "We have heard Counsel for both sides..... evidence pertaining to commissioning of the project." P6: "More importantly, there is document dated..... Section 9 against a Government Company." | A mere non-supply of some goods could not be treated as "existence of dispute", if the goods have been supplied with regard to which invoice was raised. Thus, if the invoice amount against which the debt is being claimed is against the supply of material acknowledged by the purchaser then the same would not fall under the scope of dispute as under the Code. |
| 20. | Deepak Gupta v. Ved Contracts Pvt. Ltd. & Ors. | CA(AT)(Insolvency)No s. 1262of 2019 | P3: "Learned Counsel for the Appellant submits..... , the Appeal is dismissed." | Once it is shown that amount is payable by the Corporate Debtor, the claims and counter-claims raised against the amount of debt claimed under the section 9 application then even if amount is disputed or payable and is found to be more than Rs.1,00,000/-, the |

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| | | | | application under Section 9 is to be admitted. |
| 21. | Vinod Mittal v. Rays Power Experts & Anr. | CA(AT)(Ins) No. 851 of 2019 | P11: "Having gone through the matter and on considering record..... already showed existence of dispute." | A mere issuance of completion certificate in lieu of project does not certify the <u>quality of good or service</u> issues pointed during the installation and functioning of the project pointed-out prior to the issuance of demand notice will fall under the scope of pre-existing disputes under the Code. |
| 22. | Mr. Yogesh Baliram Vargantwar v. Vignaharta Health Visionaries Pvt. Ltd. | CA(AT)(Insolvency)No. 479 of 2019 | P8: "In the aforesaid documents and in the account..... hold that it is a fit case for 'Admission'." | If the debt claimed is not crystalized by the Corporate Debtor then same will not fall under the scope of the dispute, if amount is disputed or payable and is found to be more than Rs.1,00,000/-, the application under Section 9 is to be admitted. |
| 23. | Ashoke Ghosh v. Ranjan Kumar Sovasaria & Anr. | I.A No. 3533 of 2019 in CA(AT)(Insolvency) No. 1139 of 2019 | P8: "In view of the fact that there was a pre-existence of disputeimpugned order dated 18th October, 2019." | Dispute raised by a service recipient shall be pre-existing and shall not be merely raised for the sake of dispute to reply the demand notice received by it. |
| 24. | Avalon Sports and Media v. Intex Technologies India Ltd. | CA(AT)(Ins)No. 1114-2019 | P4: "For the said reason, if documents.....that there is 'pre-existence of dispute'." | Documents evidencing pre-existence of disputes are enough proof to show that the application under section 9 is not maintainable. |
| 25. | Citicare Super Specialty Hospital v. Vighnaharta Health Visionaries Pvt. | CA(AT)(Ins)No.414-2019 | P6: "In view of the aforesaid fact, even.....by the Appellant with the Respondent." | If there is part admission of dues and part dues are disputed and the same were disputed prior to the issuance of demand notice, then such application under section 9 of the Code is barred by pre-existence of disputes. |

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| | Ltd. | | | |
| 26. | Rajat Saini & Anr. v. Pret Study by Janak Fashions Private Limited | CA(AT)(Ins) No. 1026- 2019 | P2: "Learned counsel for the Appellant submits that.....Corporate Debtor with the Operational Creditor." | An appeal praying for dismissal of order admitting the Corporate Debtor into CIRP on ground of pre-existence of dispute shall be backed proper documentary evidence and communications exchanged between the Parties and not mere allegations. |
| 27. | Sri Jawahar Lal Luthra v. Ganesh Rice and General Industries & Anr. | CA (AT) (Insolvency) No. 945 of 2019 | P5: "From the record we find that earlier.....which cheque was issued had not been supplied." | A cheque issued by the Corporate Debtor against the debt amount claimed by the creditor amounts to admission of debt by the Corporate Debtor and therefore not subject to dispute under the Code. |
| 28. | P. Vijay Kumar v. Priya Trading Company & Ors. | CA(AT)(Insolvency) 204-2019 | P2: "An 'Operational Creditor' may initiate.....adjudicating authority has to reject the application."" P7: "Now coming to the issue as regards the unpaid..... devoid of merit is rejected." | A dispute shall be relatable to <u>the existence of the amount of the debt, quality of good or service or breach of a representation or warranty.</u> |
| 29. | Manjeet Kaur v. Tricolite Electrical Industries Ltd. | CA (AT) (Insolvency) No. 894-2019 | P11: "In view of the decision of Hon'ble Supreme Court in..... reject an application and not otherwise."" P12: "From the aforesaid finding..... submission cannot be accepted." | It is of no matter that the debt is disputed so long as the debt is "due" i.e. payable unless interdicted by some law or has not yet become due in the sense that it is payable at some future date. It is only when this is proved to the satisfaction of the adjudicating authority that the adjudicating authority may reject an application and not otherwise. Therefore, the scope of dispute shall emanate from <u>the existence of debt and the amount of debt.</u> |
| 30. | Vivek Pasricha and Anr. v. Amit Sachdeva and Anr. | CA (AT) (Insolvency) No. 759-2019 | P12: "From the facts as detailed above, as we.....1st Respondent was not maintainable." | Non-payment of salary by the Corporate Debtor in terms of employment is prima-facie within the scope of dispute under the Code and such application under section is barred on account of pre-existence of dispute. |

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| 31. | Shyam Metalics And Energy Ltd. v. Rathi Steel And Power Ltd. | CA(AT)(Insolvency) 130-2019 | P6: "We find that we need not enter into..... relied on by the Appellant was sent." | Defects and Deficiency in goods/services pointed out prior to receiving of demand notice is well within the scope of pre-existing dispute under the Code. |
| 32. | Valmont Structures Pvt. Ltd. v. Thakkarsons Roll Forming Pvt. Ltd. | CA(AT)Insolvency) 433-2019 | P4: "Admittedly, the Suit was filed..... loss on account of Operational Creditor." P5: "We find that the Adjudicating Authority..... There is no substance in this Appeal." | A suit, arbitration, any proceeding or application pending before any competent court of law or authority prior to the issuance of demand notice can be relied upon to hold that there is a 'dispute' raised by the corporate debtor. |
| 33. | IMECO Limited v. BEML Limited | CA(AT)(Insolvency) No. 801-2018 | P9: "In so far as pre-existence of a dispute..... no exception can be taken to the same." | The existence of an undisputed debt is the basic edifice upon which the triggering of CIRP rests. Therefore, merely raising a dispute for the sake of dispute, if not raised prior to application under section 9, cannot be adjudged as a 'dispute' raised by the corporate debtor. |
| 34. | Narender Sharma v. Vistar Construction Pvt. Ltd. | CA(AT)(Insolvency) No. 60-2019 | P10: The aforesaid reply given on behalf Code dated 5th October, 2017." P11: "We find that there was a pre-existing dispute is accordingly dismissed. No Costs." | A notice of dispute (reply to demand notice) evidencing pre-existing dispute is conclusive for the Adjudicating Authority to reject the application under section 9 of the code on account of pre-existence of dispute. |
| 35. | Pleasant Valley Development Pvt. Ltd. v. Spain Hospitality Pvt. Ltd. | CA(AT)(Insolvency) No. 799-2019 | P7: "Learned counsel for the Appellant submits that the..... rightly rejected the application." | A notice of dispute (reply to demand notice) evidencing pre-existing dispute is conclusive for the Adjudicating Authority to reject the application under section 9 of the code on account of pre-existence of dispute. |
| 36. | Jagan | CA(AT)(Insolvency) | P8: "We have heard the Appellant in | If at a given point the application is not a case of |

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| | Pampapathy v. Wipro Limited. | 155,157 & 158-2019 | person and..... by the Appellant under Section 9 of I&B Code." | admitted or apparent debt and the Adjudicating Authority is not expected to enter into the disputed questions of facts. The Adjudicating Authority is only required to notice whether there is a 'pre-existence of dispute' or not. |
| 37. | R.S. Cottmark (India) Pvt. Ltd. & Ors. v. Rajvir Industries Ltd. | CA(AT)(Insolvency) No. 653 & 654-2018 | P15: "The Hon'ble Supreme Court in..... assertion of fact unsupported by evidence." P16: "In the present case, the existence..... cotton supplied by the Petitioner." | Defects and Deficiency in goods/services pointed out prior to delivery/raising of invoice amounts to pre-existence of dispute. |
| 38. | Next Education India Pvt. Ltd. v. K12 Techno Services Pvt. Ltd. | CA(AT)(Insolvency) No. 98-2019 | P3: "It is a settled law that if any dispute..... be termed to be a 'preexisting dispute'. P4: "We find that the Adjudicating Authority has failed..... was issued on 8th August, 2017." | Disputes raised prior to the issuance of the invoices or Demand Notice u/s 8(1) of the Code with regard to quality of service or goods or pendency of the suit or arbitration, in such case one may take the plea that there is an 'existence of dispute' |
| 39. | Gupshup Technology India Pvt. Ltd. v. Interpid Online Retail Pvt. Ltd. | CA(AT)(Insolvency) No. 23-2019 | P13: "The Hon'ble Supreme Court in..... may reject an application and not otherwise." P19: "The Adjudicating Authoritythe claim is barred by limitation. | Defects and Deficiency in goods/services pointed out prior to delivery/raising of invoice amounts to pre-existence of dispute. |
| 40. | Ahluwalia Contracts (India) Limited v. Raheja Developers Limited | CA(AT)(Insolvency) No. 703-2018 | P16: "In "MobiloX Innovations Pvt..... demand notice or invoice, as the case may be." P20: "From the aforesaid findings, it is clear that.... demand notice under | A dispute shall be relatable to <u>the existence of the amount of the debt, quality of good or service or breach of a representation or warranty.</u> |

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| | | | Section 8(1) or invoice." P21: "In the present case, it is not in dispute..... work and certified all the bills." | |
| 41. | Krystal Integrated Services Pvt. Ltd. v. Indiaonline Express Pvt Ltd. | CA(AT)Insolvency) No. 194-2019 | P15: "We have gone through the record and heard..... to record finding with regard to merits of the claim." | A dispute shall be relatable to <u>the existence of the amount of the debt, quality of good or service or breach of a representation or warranty.</u> |
| 42. | Universal Solutions of America LLC v. The Travancore Cements Ltd. | CA(AT)(Insolvency) No. 704-2019 | P3: "However, we are not deliberating..... which was issued on 13th November, 2017." | 'existence of dispute' prior to issuance of Demand Notice u/s 8(1) of the Code is a ground for dismissal of application u/s 9 of the Code. |
| 43. | Peter Johnson John v. KEC International Ltd. | CA(AT)(Insolvency) No. 188-2019 | P9: "For what has been discussed hereinabove..... of merit stands dismissed." | Adjudication of debt before a competent court of law wherein adjudication is sought in regard to a foreign decree obtained ex-parte falls within the purview of a pre-existing dispute. |
| 44. | Battula Anjaneyulu v. DBM Geotechnics & Construction Pvt. Ltd. | CA(AT)(Insolvency) No. 261-2019 | P16: "Therefore, it is stated, it can be concluded..... prior to the filing of the suit." P19: "From the submission made.....accordingly dismissed. No costs." | A summary suit for recovery of dues filed prior to issuance of Demand Notice u/s 8(1) of the Code would constitute a pre-existing dispute between the Parties under the Code. |
| 45. | Continental Carriers Pvt. Ltd. v. Camson Agri-Ventures Pvt. Ltd. | CA(AT)(Insolvency) 523-2019 | P2: "On hearing learned counsel for the Appellant..... sending the goods on time." | Deficiency communicated by the Corporate Debtor at the rendering the services is a pre-existing dispute and sufficient for dismissal of an application filed under section 9 of the Code. |

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| 46. | Karpara Project Engineering Pvt. Ltd. v. BGR Energy Systems Ltd. | CA(AT)(Insolvency) No.622-2018 | <p>P3: "Initiation of Corporate Insolvency Resolution Process at the instance..... adjudicating authority has to reject the application.""</p> <p>P7: "We have given our anxious consideration to..... Authority must reject the application."</p> <p>P9: "For what has been discussed hereinabove.... shall be no order as to costs."</p> | A dispute shall be relatable to <u>the existence of the amount of the debt, quality of good or service or breach of a representation or warranty.</u> |
| 47. | Beacon Courier & Cargo India Pvt. Ltd. v. Trim India Pvt. Ltd. | CA(AT)(Insolvency) 129-2019 | P2: "Learned counsel appearing on behalf of Appellant..... appeal is dismissed. No costs." | A summary suit for recovery of dues filed prior to issuance of Demand Notice u/s 8(1) of the Code would constitute a pre-existing dispute between the Parties under the Code. |
| 48. | Amanpreet Singh Bawa v. Kandla International Container Terminal Pvt. Ltd. & Ors. | CA(AT)(Insolvency) No. 686-2018 | <p>P3: "Initiation of Corporate Insolvency Resolution Process at the instance..... authority has to reject the application.""</p> <p>P6: "Having held that the Corporate Debtor..... argument raised is unsustainable."</p> | It is of no matter that the debt is disputed so long as the debt is "due" i.e. payable unless interdicted by some law or has not yet become due in the sense that it is payable at some future date. It is only when this is proved to the satisfaction of the adjudicating authority that the adjudicating authority may reject an application and not otherwise. Therefore, the scope of dispute shall emanate from <u>the existence of debt and the amount of debt.</u> |
| 49. | CIL Australia North Pty. Ltd. v. Sharp Corp Ltd. | CA(AT)(Insolvency) 319-2019 | <p>P5: "Learned counsel appearing..... appeal number 9405 of 2017"</p> <p>P7: "Hon'ble Supreme Court in..... the adjudicating authority has to reject the application"</p> <p>P8: "Admittedly the suit in question</p> | A suit filed prior to issuance of Demand Notice u/s 8(1) of the Code would constitute a pre-existing dispute between the Parties under the Code. |

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| | | | relates to same..... suit which is not permissible." | |
| 50. | Santosh Shinde v. Fairmacs Shipping and Transport Services Pvt. Ltd. & Anr. | CA (AT) (Insolvency) No. 798-2018 & 46-2019 | P7: "Thus, in the absence of any pre-existing dispute..... Appeal is accordingly dismissed." | Documents evidencing pre-existence of disputes are enough proof to show that the application under section 9 is not maintainable. |
| 51. | Jungheinrich Lift Truck India Pvt Ltd v. United Cold Chain & Food Processing Ltd. | CA(AT)(Insolvency) 768-2018 | P7: "The Adjudicating Authority on wrong assumption of facts and taking into consideration the irrelevant facts erred in holding that there is pre-existence dispute." | A short supply of goods/material against the token advance received by an entity would not amount to pre-existence of dispute or dispute under the definition of the Code. A dispute shall be relatable to <u>the existence of the amount of the debt, quality of good or service or breach of a representation or warranty.</u> |
| 52. | Shweta Uppal v. Shansco Packaging Pvt. Ltd. | CA (AT) (Insolvency) No. 321-2019 | P5: "It is apparent from the email that the Respondent alleged breach of employment against the Appellant and stated that she could not claim for salary as compensation. Apparently, there is a pre-existing dispute." | A suit filed prior to issuance of Demand Notice u/s 8(1) of the Code would constitute a pre-existing dispute between the Parties under the Code. |
| 53. | Trade Affairs v. Borkar Colorpacks Pvt. Ltd. | CA(AT)(Insolvency) No. 753-2018 | P4: "Learned counsel appearing on behalf of the..... dismissed. No costs." | Defects and Deficiency in goods/services pointed out prior to delivery/raising of invoice amounts to pre-existence of dispute. |
| 54. | Bhandari Hosiery Exports Ltd. & Ors. v. In-Time Garments Pvt. | CA(AT)(Insolvency) No.143-2019 | P3: "We find that there is a pre-existing dispute due to which the application under Section 9 of the I&B Code was not accepted." | Documents evidencing pre-existence of disputes are enough proof to show that the application under section 9 is not maintainable. |

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| | Ltd. & Ors. | | | |
| 55. | Sarla Tantia v. Ramaanil Hotels & Resorts Pvt. Ltd. | CA(AT)(Insolvency) 513-2018 | <p>P6: "Initiation of Corporate Insolvency Resolution Process at the instance..... authority has to reject the application.""</p> <p>P8: "The Adjudicating Authority was not supposed..... which he did not at all respond."</p> | A dispute shall be relatable to <u>the existence of the amount of the debt, quality of good or service or breach of a representation or warranty</u> |
| 56. | Centrum Capital Limited v. Orient Green Power Company Limited & Anr. | CA(AT)(Insolvency) No. 508-2018 | P20: "Thus, as there is a pre-existence of dispute raised..... order dated 31st August, 2018." | 'Existence of dispute' prior to issuance of Demand Notice u/s 8(1) of the Code is a ground for dismissal of application u/s 9 of the Code. |
| 57. | Fire Trix Engineering & Systems Pvt. Ltd. v. Maxitech Engineering Pvt. Ltd. | CA(AT)(Insolvency)673-2018 | P5: "As we find that there is a pre-existing dispute..... appeal is dismissed. No cost." | 'Existence of dispute' prior to issuance of Demand Notice u/s 8(1) of the Code is a ground for dismissal of application u/s 9 of the Code. |
| 58. | Financial Pundits LLP v. VSR Infratech Pvt. Ltd. | CA(AT)(Insolvency)103-2019 | P4: "There being a pre-existence dispute..... appeal. No cost." | 'Existence of dispute' prior to issuance of Demand Notice u/s 8(1) of the Code is a ground for dismissal of application u/s 9 of the Code. |
| 59. | Aluminium Udyog v. Parnika Commercial & Estate Pvt. Ltd. | CA(AT)(Insolvency) 93-2019 | P4: "From the aforesaid facts we finddismissed. No costs." | 'existence of dispute' prior to issuance of Demand Notice u/s 8(1) of the Code is a ground for dismissal of application u/s 9 of the Code. |
| 60. | Mr. Dingo Ku v. | CA(AT)(Insolvency) | P10: "From the e-mail dated 26th | Disputes relating to delay in delivery of project and the |

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| | suntech Infrea Solutions Pvt. Ltd. | 738-2018 | January, 2018 as..... Section 9 was not maintainable." | loss sustained by the 'Corporate Debtor' in rectifying the workmanship defects in the works made by the Creditor claiming the debt falls within the scope of pre-existing dispute. |
| 61. | D Srinivasulu & Anr. v. Dr. Reddy's Laboratories Ltd. | CA(AT)(Insolvency) 190-2017 | P9: "In the aforesaid background, as we find..... August, 2017 is accordingly set aside." | Documents evidencing pre-existence of disputes are enough proof to show that the application under section 9 is not maintainable. |
| 62. | Yash Technologies Pvt. Ltd. v. Base Corporation Limited | CA(AT)(Insolvency) 01-2019 | P7: "As we find that there is existence..... was not maintainable." | A petition originally filed under Section 433(e) and Section 434 (1) of the Companies Act, 1956 which was later transferred to the Adjudicating Authority upon enactment of the Code, the existence of dispute raised prior to the filing of petition under Section 433(e) and Section 434 (1) of the Companies Act, 1956 will fall within the scope of pre-existence of dispute under the Code. |
| 63. | Overseas Infrastructure Alliance (India) Pvt. Ltd. v. Kay Bouvet Engineering Ltd. | CA (AT) No. 582-2018 | P8: "Heard learned counsel for the parties and.....raised in reply to the demand notice is a mere bluster." | A notice of dispute (reply to demand notice) evidencing pre-existing dispute is conclusive for the Adjudicating Authority to reject the application under section 9 of the code on account of pre-existence of dispute. |
| 64. | Achenbach Buschhutten GmbH & Co. Vs Arcotech Limited | CA (AT) (Insolvency) 97-2018 | P19: "From the aforesaid facts, it appears..... accordingly dismissed. No costs." | A petition originally filed under Section 433(e) and Section 434 (1) of the Companies Act, 1956 which was later transferred to the Adjudicating Authority upon enactment of the Code, the existence of dispute raised prior to the filing of petition under Section 433(e) and Section 434 (1) of the Companies Act, 1956 will fall within the scope of pre-existence of dispute under the Code. |

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| 65. | J.B. Tiwari Vs Boistadt India Limited & Ors. | CA (AT) (Insolvency) 268-2018 | P7: "The Appeal claims and the counsel..... that this was the outstanding amount." | <p>A corporate debtor having notice and knowledge of the proceeding before Adjudicating Authority cannot sit on the hedge to take advantage of the technical requirement of Adjudicating Authority sending a Notice through its mechanism.</p> <p>Failure to appear before Adjudicating Authority despite proof of pre-existing dispute (whether supplied by way reply to demand notice or not) will have no bearing before the Appellate Adjudicating Authority.</p> |
| 66. | Anil Nanda Vs Hari Kishan Sharma & Ors. | CA (AT) Insolvency) No. 167-2018 | <p>P7: "In "Innoventive Industries Limited.... out of the clutches of the Code.""</p> <p>P9: "In the present case, the..... of so-called existence of dispute."</p> | <p>In is a settled principle of law that even part of the dues, once becomes payable comes within the meaning of 'debt' and if not paid it will amount to default.</p> <p>The existence of an undisputed debt is the basic edifice upon which the triggering of CIRP rests.</p> <p>Therefore, merely raising a dispute for the sake of dispute, if not raised prior to application under section 9, cannot be adjudged as a 'dispute' raised by the corporate debtor.</p> |
| 67. | Rajeev K Aggarwal Vs Panipat Texo Fabs Pvt Ltd | CA (AT) 715-2018 | <p>P3: "The Appellant did not question..... goods supplied by the Operational Creditor."</p> <p>P4: "In view of the foregoing discussion.... be no order as to costs."</p> | <p>Documents evidencing pre-existence of disputes are enough proof to show that the application under section 9 is not maintainable.</p> |
| 68. | Sudhi Sachdev v. APPL Industries Ltd. | CA (AT) No. 623-2018 | P6: "In the present case, it is not in dispute..... It is accordingly dismissed. No Costs." | <p>A suit, arbitration, any proceeding or application pending before any competent court of law or authority prior to the issuance of demand notice can be relied upon to hold that there is a 'dispute' raised by the corporate debtor.</p> |

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| 69. | Sudhir Sales & Services Ltd. v. D-Art Furniture Systems Pvt. Ltd | CA (AT) No. 327-2018 | <p>P24: "The letter dated 9th September, 2017..... application under Section 9."</p> <p>P25: "In "Innoventive Industries Ltd.(Supra)"..... existence of dispute or not."</p> <p>P26: "In "Mobilox Innovations Pvt. Ltd..... by the 'Operational Creditor'."</p> | A dispute shall be relatable to <u>the existence of the amount of the debt, quality of good or service or breach of a representation or warranty.</u> |
| 70. | G. M. Lingaraju v. Gurudutt Sugars Marketing Pvt. Ltd. & Anr. | Company Appeal (AT) (Insolvency) No. 385 of 2018 | P5: "Having heard the learned counselis accordingly set aside." | The fact that there is an 'existence of dispute' prior to issuance of demand notice, the petition under Section 9 was not maintainable under the Code. |
| 71. | AVON Capital v. Tattva & Mittal Lifespaces Pvt. Ltd. | CA (AT) No. 256-2017 | P20: "The reply letter dated 25th January..... Authority to admit the application." | <p>The dispute raised on imaginary facts and circumstances while replying to the demand notice cannot be treated to be an 'existence of dispute' for rejecting the application under Section 9.</p> <p>In absence of any evidence relating to pre-existence dispute i.e. prior to issuance of demand notice under Section 8(1) of the Code it would be considered that there was no dispute in existence.</p> |
| 72. | Grasim Industries Ltd. v. Spentex Industries Ltd. | CA (AT) No. 393-2018 | P5: "On hearing the parties and perusal..... only by a court of competent jurisdiction." | A dispute relating to quality of product supplied by an entity communicated by the purchaser vide emails will amount to pre-existing dispute under the Code. |
| 73. | J. Technologies India Ltd. v. Juara IT Solutions Pvt. Ltd. | CA (AT) No. 378-2018 | P3: "Learned counsel appearing on behalf..... Section 8(1) of the 'I&B Code'." | If a dispute is in relation to quantum of payment claimed under a section 9 application then even if amount is disputed or payable and is found to be more than Rs.1,00,000/-, the application under Section 9 is to be |

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| | | | | admitted. Existence of Debt is subject of dispute and not the amount of dispute. |
| 74. | Drulum India Pvt. Ltd. v. Sharma Kalypso Pvt. Ltd. | CA (AT) No. 351-2018 | P4: "In view of the aforesaid facts, the..... application under Section 9 of the I&B Code.." | Deviations pointed-out from the particulars of invoice and endorsements in the delivery challan are basis for existence of dispute. For instance: Invoice raised by the Creditor for supply of 100 units against which the Corporate Debtor upon inspection has given an endorsement in the delivery challan 70 units received and 30 units returned on account of being defective, then the said amount claimed on account of 100 units is disputed on account of existence of dispute. |
| 75. | Mitcon Consultancy & Engineering Services Ltd. v. Vitthal Corporation Ltd. | Company Appeal (AT) (Insolvency) No. 101 of 2018 | P3: "Learned counsel appearing on behalf of the respondent..... absence of any record relating to existence of dispute." | Mere mentioning of arbitration clause cannot be taken into consideration to hold that there was an existence of dispute. Any dispute subsequent to issuance of Demand Notice cannot be taken into consideration to reject an application under Section 9. |
| 76. | Parmod Yadav & Anr. v. Divine Infracon Pvt. Ltd. | CA (AT) No. 251-2017 | P10: "In view of the fact that the arbitral proceedingsSection 9 was not maintainable." | A suit, arbitration, any proceeding or application pending before any competent court of law or authority prior to the issuance of demand notice can be relied upon to hold that there is a 'dispute' raised by the corporate debtor. |
| 77. | Prateek Gupta v. Columbia Petro Chem Pvt. Ltd. | CA (AT) No. 133-2018 | P6: "The other question raised byissuance of notice under Section 8(1) of the I&B Code." | Failure to reply to demand notice duly served upon the Corporate Debtor will allow the Adjudicating Authority to presume that the debt claimed is undisputed. |

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| 78. | GAC Logistics Pvt. Ltd. v. Al Nafees Frozen Foods Exports Pvt. Ltd. | CA (AT) Nos. 237 & 238-2018 | <p>P3: "Learned Counsel appearing on behalf..... Learned Counsel appearing on behalf"</p> <p>P4: "Learned Counsel appearing on behalf..... such case is to be rejected."</p> | A dispute shall be relatable to <u>the existence of the amount of the debt, quality of good or service or breach of a representation or warranty.</u> |
| 79. | Chetan Sharma v. Jai Lakshmi Solvents (P) Ltd. & Anr. | CA (AT) Nos. 66 to 70-2018 | <p>P16: "On perusal of the documents, we find that there is no pre-existing dispute between the 'Corporate Debtor' and the 'Operational Creditors'."</p> <p>P21: "In the case of J.R. Agro Industries..... hold that there was 'existence of dispute'."</p> | The 'dispute' under the Code has to be between the Corporate Debtor and the Operational Creditor and an inter-se dispute between two groups of shareholders of the Corporate Debtor does not constitute a 'dispute' in reference to Operational Creditor(s). |
| 80. | V. v. Nagarajan v. Vishnusudha Textiles & Anr. | CA (AT) No. 30-2018 | <p>P9: "While dealing with triggering of Corporate..... has to reject the application.""</p> <p>P10: "Adverting to the facts of the instant case..... Corporate Insolvency Resolution Process."</p> | <p>Dispute under the Code cannot simply be a patently feeble legal argument for the sake of dispute or a bald assertion of fact unsupported by evidence.</p> <p>A dispute shall be relatable to <u>the existence of the amount of the debt, quality of good or service or breach of a representation or warranty.</u></p> |
| 81. | Atul Roy v. Technofac Contracts Pvt. Ltd. | CA (AT) No. 74-2018 | <p>P13: "From the aforesaid fact, we find that there is an..... on the 'Operational Creditor'"</p> <p>P14: "In the aforesaid circumstances..... to set aside the impugned order."</p> | Documents evidencing pre-existence of disputes are enough proof to show that the application under section 9 is not maintainable. |
| 82. | Explo Media Pvt. Ltd. v. Ambience | CA (AT) No. 20-2018 | P5: "From the record, as we find.....there shall be no orders to | A petition originally filed under Section 433(e) and Section 434 (1) of the Companies Act, 1956 which was |

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| | Pvt. Ltd. | | cost." | later transferred to the Adjudicating Authority upon enactment of the Code, the existence of dispute raised prior to the filing of petition under Section 433(e) and Section 434 (1) of the Companies Act, 1956 will fall within the scope of pre-existence of dispute under the Code. |
| 83. | Kanti Commercials Pvt. Ltd. v. Belthangady Taluk Rubber Growers Marketing & Processing Co-operative Society Ltd. & Ors. | CA (AT) No. 221-2017 | P7: "In the present case, it is notof Section 8 of the 'I&B Code'." P8: "The Hon'ble Supreme Court in.... in Section 9(5) of the Act."" | A suit, arbitration, any proceeding or application pending before any competent court of law or authority prior to the issuance of demand notice can be relied upon to hold that there is a 'dispute' raised by the corporate debtor. |
| 84. | Shrivarad Polyfab v. OLAM Agro India Pvt. Ltd. | CA (AT) (Insol.) No. 261-2017 | P7: "In view of the fact that there is an existence offorum for appropriate relief. No cost." | Damages and losses suffered by the Corporate Debtor due to supply of sub-standard quantities by the Creditor is a dispute under the Code. |
| 85. | Mohan Shivraman Nair v. Agarwal Coal Corporation Pvt. Ltd. & anr. | Company Appeal (AT) (Insolvency) No. 06 of 2018 | P4: "We have heard learned counsel for the parties..... no ground made out to interfere with the impugned order." | The existence of an undisputed debt is the basic edifice upon which the triggering of CIRP rests. Therefore, merely raising a dispute for the sake of dispute, if not raised prior to application under section 9, cannot be adjudged as a 'dispute' raised by the corporate debtor. |
| 86. | Barjoria Holdings Pvt. Ltd. v. Bard Roy Infotech Pvt. Ltd. & Anr. | Company Appeal (AT) (Insolvency) No. 275 of 2017 | P4: "In view of the fact that the Interim Resolution Professional found that there is an existence of dispute with regard to the supplies made in different districts of Uttar | Defects and Deficiency in goods/services pointed out prior to delivery/raising of invoice amounts to pre-existence of dispute. |

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| | | | Pradesh, we hold that petition under Section 9 in view of such existence of dispute was not maintainable." | |
| 87. | Elecon Engineering Co. Ltd. v. Ducon Technologies (I) Pvt. Ltd. | CA (AT) No.14-2018 | P5: "Apart from the aforesaid fact, we find that..... (Performance Bank Guarantee)."" | Statement of account reflecting losses incurred by Corporate Debtor on supply of defective material is prima-facie existence of dispute under the Code. |
| 88. | AS Technosoft Pvt. Ltd. v. Goldsquare Sales India Pvt. Ltd. | CA (AT) No. 331-2017 | P7: "From the aforesaid facts, it is clearthere shall be no order as to cost." | Damages and losses suffered by the Corporate Debtor due to supply of sub-standard quantities by the Creditor is a dispute under the Code. |
| 89. | Vimal Organics L. Vs Anya Polytech & Fertilizers P.L. | Vimal Organics L. Vs Anya Polytech & Fertilizers P.L. | P9: "In the present case as we find that there is an 'existence of dispute',the appeal is dismissed. No cost." | Defects pointed-out post effective supply of goods i.e. at the stage of commissioning i.e. at the trial stage would amount to existence of dispute under the Code. |
| 90. | Varda Spining & Weaving Mills Pvt. Ltd. v. Jindal Cotex Ltd. | Company Appeal (AT) (Insolvency) No. 305 of 2017 | P4: "Similar issue fell for consideration before the..... reject the application."" P5: "In the present case as we find that there..... In the present case as we find that there" | A dispute shall be relatable to <u>the existence of the amount of the debt, quality of good or service or breach of a representation or warranty.</u> |
| 91. | J. P. Engineers Pvt. Ltd. v. Indo Alusys Industries Ltd. | Company Appeal (AT) (Insolvency) No. 220 of 2017 | P5: "According to counsel for the Respondent-'Corporate Debtor', theSection 9 of the 'I&B Code' was not maintainable." | Discrepancy in the invoice number raised in favor of the Corporate Debtor and against which the debt is claimed is a valid dispute under the Code. |
| 92. | Sobha Limited v. Pancard Clubs Ltd. | CA (AT) (Insolvency) No. 162-2017 | P11: "Having heard learned counsel for the appellant..... Section 9 of the 'I&B Code' was not maintainable." | A discrepancy in amount of debt in terms of work order issued and the invoice raised is a prima-facie dispute relatable to <u>the existence of the amount of the debt</u> and |

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| | | | | hence, a pre-existence of dispute. |
| 93. | Ksheeraabd Constructions Pvt. Ltd. v. Vijay Nirman Company Pvt. Ltd. | CA (AT) No. 167-2017 | P16: "The aforesaid provisions made in theto be a "record of Operational Debt". | A suit, arbitration, any proceeding or application pending before any competent court of law or authority prior to the issuance of demand notice can be relied upon to hold that there is a 'dispute' raised by the corporate debtor. |
| 94. | Prem Sarup Narula v. Bycell Communications India Ltd. | CA (AT) No. 265-2017 | P3: "In view of the aforesaid positionagainst the 'Corporate Debtor'." | A petition originally filed under Section 433(e) and Section 434 (1) of the Companies Act, 1956 for winding- up, which was later transferred to the Adjudicating Authority upon enactment of the Code, the existence of dispute raised prior to the filing of petition under Section 433(e) and Section 434 (1) of the Companies Act, 1956 will fall within the scope of pre-existence of dispute under the Code. |
| 95. | United Projects Constructions Ltd. v. Aerocon Buildwell Pvt. Ltd. | CA (AT) No. 164-2017 | P4: "Having heard learned counsel forInsolvency Resolution Process' against it." | Dispute under the Code cannot simply be a patently feeble legal argument for the sake of dispute or a bald assertion of fact unsupported by evidence. A dispute shall be relatable to <u>the existence of the amount of the debt, quality of good or service or breach of a representation or warranty</u> |
| 96. | Yogendra Yasupal v. Jigsaw Solutions & Anr. | CA (AT) No. 222-2017 | P3: "From the enclosure attached to the appeal..... , (2017) SCC OnLine SC 1154". | A dispute shall be relatable to <u>the existence of the amount of the debt, quality of good or service or breach of a representation or warranty</u> |
| 97. | Smartcity (Kochi) Infrastructure Pvt. Ltd. v. Synergy Property Development Services Pvt. Ltd. | CA (AT) No. 80-2017 | P9: "Similar issue fell for consideration before this..... terms of section 8 of the I&B Code."" | Disputes raised prior to the issuance of Demand Notice u/s 8(1) of the Code regarding quality of service or goods or pendency work, in such case one may take the plea that there is an 'existence of dispute' |

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| | and Anr. | | | |
| 98. | Mass Metals Pvt. Ltd. v. Sunflag Iron & Steel Co. Ltd. | CA (AT) No. 112-2017 | P5: "In "Uttam Galva Steels Limited vs..... section 8 of the I&B Code." P8: "n "M/s. Innoventive Industries Ltd..... debtor before passing its order." | Demand Notice issued by an Advocate/Lawyer without proper authorization from the Creditor or its board cannot be treated as a notice under section 8 of the Code. Accordingly, the petition under section 9 at the instance of such creditor is not maintainable. |
| 99. | United Motors Heavy Equipment Pvt. Ltd. v. Sundaram Industries Pvt. Ltd. | CA (AT) No. 118-2017 | P3: "Notice was issued on Respondent-'Corporate Debtor' to state whether any dispute was in existence prior to issuance of Section 8 notice." P5: "Learned Counsel appearing on behalf of appellant..... re with the impugned order." | A dispute shall be relatable to <u>the existence of the amount of the debt, quality of good or service or breach of a representation or warranty.</u> |
| 100. | VDS Plastics Pvt. Ltd. v. Pal Mohan Electronics (P) Ltd. | CA (AT) No. 58-2017 | P2: "Learned Counsel for the Appellant while..... under section 9 of the 'I&B Code'." P5: "From letter dated 18t August, 2016..... held that there is an 'existence of dispute'." | A dispute shall be relatable to <u>the existence of the amount of the debt, quality of good or service or breach of a representation or warranty.</u> |
| 101. | JK Jute Mill Mazdoor Morcha v. Juggilal Kamlapat Jute Mills Co. Ltd. | CA (AT) No. 82-2017 | P10: "According to Respondents, there is a..... before the High Court of Delhi." P12: "Ld. Counsel for the Respondent relied..... Agro Industries Limited." | A dispute shall be relatable to <u>the existence of the amount of the debt, quality of good or service or breach of a representation or warranty.</u> |
| 102. | Annapurna Infrastructure | CA (AT) No. 32-2017 | P24: "The aforesaid provisions and format of a..... shown as record of | A dispute shall be relatable to <u>the existence of the amount of the debt, quality of good or service or breach</u> |

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| | Pvt. Ltd. and Anr. v. SORIL Infra Resources Ltd. | | default." P25: "In Kirusa Software Private..... default on nonpayment." P39: "However, we find that theSec. 9, on other ground of 'existence of dispute'." | <u>of a representation or warranty.</u> |
| 103. | Bhash Software Labs Pvt. Ltd. v. Mobme Wireless Solutions Ltd. | CA (AT) No. 79-2017 | P8: "In "Mls. Innoventive Industries..... Corporate debtor before passing its order." P13: "The case of appellant is covered by decision in "Kirusa Softwarewas not maintainable." | Defects and Deficiency in goods/services pointed out prior to delivery/raising of invoice amounts to pre- existence of dispute. |
| 104. | International Road Dynamics South Asia Pvt. Ltd. v. Reliance Infrastructure Ltd. | CA (AT) Nos. 72 & 77- 2017 | P11: "Learned counsel for the respondent also highlighted, we are not deciding such issue." | In absence of any evidence relating to pre-existence dispute i.e. prior to issuance of demand notice under Section 8(1) of the Code it would be considered that there was no dispute in existence. |
| 105. | Uttam Galva Steels Ltd. Vs DF Deutsche Forfait AG & Anr. | CA (AT) No. 39-2017 | P31: "The demand notice/invoice..... prior to issue of notice under Section 8" P37: "In view of the decision of "Kirusa Software..... Appellant was not maintainable." | A dispute shall be relatable to <u>the existence of the amount of the debt, quality of good or service or breach of a representation or warranty.</u> |
| 106. | P K Ores Pvt. Ltd. Vs Tractors India Pvt. Ltd. | CA (AT) No. 56-2017 | P14: "In "Kirusa Software Private Ltd. Vs Mobilox..... stall the insolvency resolution process."" | A dispute shall be relatable to <u>the existence of the amount of the debt, quality of good or service or breach of a representation or warranty.</u> |

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| | | | <p>P15: "In the present case we find that the Corporate..... (6) of Section 5 of I&B Code."</p> <p>P16: "In this appeal as admittedly..... dated 3rd April 2017."</p> | |
| 107. | MCL Global Steel Pvt. Ltd. Vs Essar Projects India Ltd. & Anr. | CA (AT) No. 29-2017 | <p>P14: "The Appellate Tribunal in the said case..... the Corporate debtor before passing its order."</p> <p>P17: "The next question arises for consideration..... of Section 8 of the 'I & B Code'."</p> <p>P26: "In the present case as admittedly a notice was issued..... Operational Creditor was not maintainable."</p> | <p>A dispute under the Code can only be discerned from the existence of amount of debt or quality of goods or service or breach of representation or warranty. However, it is capable of being discerned not only from in a suit or arbitration (pending litigation between the parties) from any document related to it.</p> <p>Mere raising a dispute for the sake of dispute, if not raised prior to application and not pending before any competent court of law or authority cannot be relied upon to hold that there is a 'dispute' raised by the corporate debtor.</p> |
| 108. | Meyer Apparel Ltd. & Anr. Vs Surbhi Body Products Pvt. Ltd. | CA (AT) Nos. 33 & 34-2017 | <p>P16: "The question as to what does 'dispute'..... just to stall the insolvency resolution process.""</p> | <p>The definition of dispute is "inclusive" and not "exhaustive". The same has to be given wide meaning provided it is relatable to <u>the existence of the amount of the debt, quality of good or service or breach of a representation or warranty</u>.</p> |
| 109. | Philips India Ltd. v. Goodwill Hospital & Research Centre Ltd. | CA (AT) Nos. 14 & 15-2017 | <p>P17: "the question as to what does "dispute" a..... insolvency resolution process.""</p> <p>P18: "In the present case the..... about the claim of debt."</p> | <p>An entity must raise a dispute with sufficient particulars and in case a dispute is being raised by simply showing a record of dispute in a pending arbitration or suit, the dispute must also be relatable to the three conditions i.e. <u>the existence of the amount of the debt, quality of good or service or breach of a representation or warranty</u>.</p> <p>It must include disputes pending before every judicial authority including mediation, conciliation etc. as long</p> |

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| | | | | there are disputes as to existence of debt or default etc., |
| 110. | Duke Sponge and Iron v. Laxmi Foils Pvt. Ltd. | Company Appeal (AT) (INSOLVENCY) No. 950 of 2019 Passed on 04/02/20 | Para 7: "Against the claim of the Appellant, Respondent claimed that there were no dues claimed because the Respondent had raised debit notes..... Para 9: It would naturally take its own course. We do not interfere in Impugned Order." | It is of no matter that the debt is disputed so long as the debt is "due" i.e. payable unless interdicted by some law or has not yet become due in the sense that it is payable at some future date. It is only when this is proved to the satisfaction of the adjudicating authority that the adjudicating authority may reject an application and not otherwise. Therefore, the scope of dispute shall emanate from <u>the existence of debt and the amount of debt.</u> |
| 111. | Steel India v. Theme Developers Pvt. Ltd. | Company Appeal (AT) (INSOLVENCY) No. 1014 of 2019 Passed on: 11/02/20 | Para 7: "It is pertinent to mention that "Operational Creditor" issued first demand notice on 28th December 2018. Based on this first demand notice. The "Corporate Debtor".... The alleged claim amount, towards interest on loan alone, cannot be termed as an „Operational Debt“. For the reasons aforesaid, we are not inclined to interfere with the order passed by the Learned Adjudicating Authority." | Dispute in relation to the amount of debt raised much prior to the issuance of demand notice to the Creditor will amount to pre-existing dispute. |
| 112. | Anish Mohan Gupta v. Hind Inn and Hotels | Company Appeal (AT) (INSOLVENCY) No. 1282 of 2019 Passed on: 12/02/20 | Para 21: "Sub-Section 2(a) of Section 8 of the IBC, if there is existence of dispute or record of the pendency of the suit or arbitration proceeding..... Para 29: In view of the aforesaid | A suit, arbitration, any proceeding or application pending before any competent court of law or authority prior to the issuance of demand notice can be relied upon to hold that there is a 'dispute' raised by the corporate debtor. |

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| | | | reasons, we do not find any illegality in the order passed by the learned Adjudicating Authority, in admitting the application under Section 9 of IBC." | |
| 113. | Indo Alusys Industries Ltd. v. SMW Metal Pvt. Ltd. | Company Appeal (AT) (INSOLVENCY) No. 409 of 2019 Passed on: 13/02/20 | Para 9: "We also find that there was a pre-existing contested dispute and the Adjudicating Authority rightly held that it could not quantify the liability, which would be matter of trial. Appellant calculated dues keeping in view MoU contents of which Respondent disputed before Notice under Section 8 of IBC were sent." | If at a given point the application is not a case of admitted or apparent debt and the Adjudicating Authority is not expected to enter into the disputed questions of facts. The Adjudicating Authority is only required to notice whether there is a 'pre-existence of dispute' or not. |
| 114. | Lloyd Insulations (India) Pvt. Ltd. v. Sintex Prefab and Infra Ltd. | Company Appeal (AT) (INSOLVENCY) No. 278 of 2020 Passed by: 14/02/20 | Para 2:" Learned counsel for the Appellant submits that there is no preexistence of dispute and e-mail etc.... Para 5: In view of the pre-existence of dispute, it is not desirable to decide whether the dispute raised by the Respondent is genuine or not which can be decided by Court of Competent Jurisdiction and not by the Adjudicating Authority or this Appellate Tribunal." | In absence of any sufficient evidence relating to pre-existence dispute i.e. prior to issuance of demand notice under Section 8(1) of the Code it would be considered that there was no dispute in existence. |
| 115. | Living Consumers Products Ltd. v. Play games 24x7 | Company Appeal (AT) (INSOLVENCY) No. | Para 4: "The Adjudicating Authority after hearing the parties and considering the records, referred to | A dispute shall be relatable to <u>the existence of the amount of the debt, quality of good or service or breach</u> |

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| | Pvt. Ltd. | 1436 of 2019 Passed on: 02/03/20 | <p>judgment in the matter of "Mobilox Innovations Private Limited v. Kirusa Software Private limited (AIR 2017 SC 4532)"....</p> <p>Para 9: Having heard learned Counsel for both sides and having gone through the correspondence between the parties, it would be appropriate to reproduce portion of relevant para of Notice, Annexure-10 dated 23rd March, 2019 sent by the 'Corporate Debtor' to the Appellant – 'Operational Creditor'.</p> <p>Para 10: We find that the Notice does disclose pre-existing dispute between the parties with regard to the services rendered by the Appellant. Notice shows loss of confidence & thus holding on to outstanding payments....."</p> | <u>of a representation</u> or <u>warranty</u> . |
| 116. | Horizon Translifters Pvt. Ltd. v. Garden Silk Mills Ltd. | Company Appeal (AT) (INSOLVENCY) No. 406 of 2020 Passed on: 12/03/20 | Para 2: "From record, we find that the Demand Notice was issued on 25 th September, 2019 but prior to the same, there was a correspondence by e-mail by which the 'Corporate Debtor' raised the supplies and the matter remains pending. In view of the same, we find no reason to interfere with the impugned order." | Documents evidencing pre-existence of disputes are enough proof to show that the application under section 9 is not maintainable. |
| 117. | Gourav Kishore | Company Appeal (AT) | Para 7: "This Appeal has been filed | An appeal praying for dismissal of order admitting the |

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| | Shinde v. Yashwant Nayak | (INSOLVENCY) No. 1107 of 2019 Passed on: 16/03/20 | raising various grounds to show that there was already pre-existing dispute.... Para 17: The record shows that there were pre-existing disputes between the parties when Notice (Annexure A-10) was sent and Application under Section 9 of IBC was filed." | Corporate Debtor into CIRP on ground of pre-existence of dispute shall be backed proper documentary evidence and communications exchanged between the Parties and not mere allegations. |
| 118. | George Vinci Thomas v. Capedge Consulting Pvt. Ltd. | Company Appeal (AT) (INSOLVENCY) No. 1395 of 2020 Passed on: 16/03/20 | Para 12: "Referring to this para of the e-mail, the Learned Counsel submitted that the reference to sale of India Techs Assets is portion which relates to success fee, and report in that context..... Para 13: We have gone through the Impugned Order where it has dealt with this e-mail dated 21.1.18..... Para 14: We find ourselves in the agreement with the Adjudicating Authority for these and other reasons recorded and we do not find that the 'Corporate Debtor' is able to show "dispute" with regard to quality of services rendered and thus we do not find any reason to interfere in the Impugned Order." | The existence of an undisputed debt is the basic edifice upon which the triggering of CIRP rests. Therefore, merely raising a dispute for the sake of dispute, if not raised prior to application under section 9, cannot be adjudged as a 'dispute' raised by the corporate debtor. |
| 119. | Sangeeta Goel v. Roidec India Chemicals Pvt. | Company Appeal (AT) (INSOLVENCY) No. 17 | Para 6: "The Learned Adjudicating Authority rejected the Application filed under Section 9 of the | Defects and Deficiency in goods/services pointed out prior to delivery/raising of invoice amounts to pre- |

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| | Ltd | of 2020 Passed on: 17/03/20 | <p>Insolvency and Bankruptcy Code 2016 mainly on the ground of pre-existing dispute.....</p> <p>Para 16: On perusal of the record, it is crystal clear that about one year before the issuance of demand notice, the Corporate Debtor complained about the quality of service to the Operational Creditor and communicated that he has not provided services after 2015 and also informed that their services are no longer required."</p> | existence of dispute. |
| 120. | Gajendra Parihar v. M/s Devi Industrial Engineers | <p>Company Appeal (AT) (Insolvency) No. 1370 of 2019</p> <p>Passed on: 18/03/20</p> | <p>Para 9: "The fact also transpires that prior to filing the application under Section 9 of the Insolvency and Bankruptcy Code, 2016.....</p> <p>Para 10: We take note of these facts and also the Judgment of the Hon'ble Supreme Court in the case of Mobilox Innovations Private Limited v. KIRUSA Software Pvt. Ltd. reported in 2018 (1 SCC 353 Paragraph 33) Supreme Court.....</p> <p>Para 11: The exchange of different Email between the Parties as referred above, it clearly establishes that there was pre-existing dispute between the parties.... Operational</p> | A dispute shall be relatable to <u>the existence of the amount of the debt, quality of good or service or breach of a representation or warranty.</u> |

| | | | Creditor/ Respondent No. 1." | |
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| 121. | Indiana Conveyors Pvt. Ltd. v. Ducon Technologies | Company Appeal (AT) (Insolvency) No. 508 of 2019 Passed on: 18/03/20 | <p>Para 29: ".Heard learned counsel for the parties and perused the records.....</p> <p>..... The judgment of Mobilox clearly stipulated that the disputes in a case ought to be real disputes and that it is the duty of the adjudicating authority to bifurcate between the two."</p> | A dispute shall be relatable to <u>the existence of the amount of the debt, quality of good or service or breach of a representation or warranty.</u> |

CONCLUSION

The jurisprudence qua requirement of evidence showing pre-existing dispute relatable to the existence of the amount of the debt, quality of good or service or breach of a representation or warranty has been settled, in reference to numerous permutations and combinations. However, there are differing views in respect of pendency of different types of adjudicatory proceedings between the parties in respect of the operational debt. The above table elucidates the cases where nature of evidence has been discussed. However, it has also been held in many cases that mere raising of dispute is not enough (prior to the issuance of demand notice) and the Tribunal has the jurisdiction to adjudge whether it is a moonshine defence or not.

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