

**NATIONAL COMPANY LAW APPELLATE TRIBUNAL, NEW DELHI**

**Company Appeal (AT) (Ins) No. 527 of 2020**

**IN THE MATTER OF:**

**MCC Concrete**

11, Shreenath Bungalows  
Opp. Yash Complex,  
30 Mtr. Gotri-Gorwa Ring Road,  
Vadodara 390 021

**...Appellant.**

**Versus**

**Northway Spaces Ltd.**

Formerly Known as Mayfair Space Ltd.  
Opp. Delhi Public School,  
Old Padra Vadsar Ring Road,  
Vadodara, Gujarat State

**...Respondent.**

**Present:**

**For Appellant: Mr. Malak Manish Bhatt and Mr. Udbhav Nanda,  
Advocates.**

**For Respondent: Mr. Manu Aggarwal, Advocate.**

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

**JARAT KUMAR JAIN, J:**

This Appeal has been preferred by the Appellant M/s MCC Concrete (Operational Creditor) against the order dated 12/02/2020 passed by the Adjudicating Authority (National Company Law Tribunal), Ahmadabad Bench,

Ahmadabad. Whereby the Application preferred by the Appellant under Section 9 of the Insolvency and Bankruptcy Code (In Short I&B Code) has been rejected.

2. Brief facts of this case are that the Operational Creditor (Appellant herein) has supplied ready MCC Concrete at various sites of the Corporate Debtor (Respondent herein) upon placing purchase order by the Corporate Debtor. Pursuant thereto the Operational Creditor had issued invoices upon the Corporate Debtor along with delivery challans. The delivery challans are signed and stamped by the Corporate Debtor. The Corporate Debtor was earlier known as Mayfair Spaces Ltd. Hence, all the invoices and delivery challans were issued in the name of Mayfair Spaces Ltd. As per ledger account the Operational Creditor has supplied goods to the Corporate Debtor for the total sum of Rs. 02,29,94,288/-. Whereas, the Corporate Debtor has made part payment of Rs. 02,09,30,948/-. Even after several email communications, the Corporate Debtor has not made any payment for balance amount of Rs. 20,63,340/-. Therefore on 11/02/2017 the Operational Creditor has sent a demand notice to the Corporate Debtor. Despite receipt of the notice, the Corporate Debtor has neither replied to the notice nor made any payment. Therefore, the Operational Creditor has filed an Application under Section 9 of the I&B Code before the Adjudicating Authority for initiation of Corporate Insolvency Resolution Process (CIRP) against the Corporate Debtor.

3. The Corporate Debtor resisted the Application on the ground that the invoices dated 15/07/2013 and 18/10/2013 bearing nos. 661 and 360 of Rs.

5,33,120/- and Rs. 5,16,460/- respectively have been issued to the Corporate Debtor. As per the said invoices, goods were delivered to Mayfair Corporate Park. The Corporate Debtor has no connection with Mayfair Corporate Park. Therefore, the said invoices were returned by the Corporate Debtor vide its letter dated 16/07/2013 and 21/10/2013 stating that the bills are erroneously sent to them. Again, 14 invoices (particulars mentioned at pg.76 of the appeal paper-book) were issued by the Operational Creditor without proper challans which shows that goods were not delivered to the Corporate Debtor. The claim of the Operational Creditor is based on the invoices which are of 2013, whereas the application is filed on 15/01/2018. Thus, the claim is barred by limitation.

4. After hearing the parties, Ld. Adjudicating Authority held that Operational Creditor is maintaining a running account of the Corporate Debtor and as per the ledger account, the last payment of Rs. 12 lacs were made by the Corporate Debtor on 05/11/2015 and the Application is filed on 15/01/2018. Thus, the application is within limitation. Ld. Adjudicating Authority held that on 15/07/2013 and 18/10/2013 no order was placed by the Corporate Debtor, therefore, the invoices dated 15/07/2013 and 18/10/2013 bearing nos. 661 and 360 have been issued erroneously. Therefore, the Corporate Debtor vide its letter dated 16/10/2013 and 21/10/2013 sent back the invoices stating that the Corporate Debtor has no connection with Mayfair Corporate Park to whom the goods were delivered. On this basis it is held that there is pre-existing dispute regarding the goods supplied and invoices raised thereof. Hence, rejected the application.

5. Being aggrieved with this order, the Operational Creditor has filed this Appeal.

6. Ld. Counsel for the appellant made following submissions:

i. There is no pre-existing dispute with respect to the two invoices. Actually, the goods delivered on the site of Mayfair Corporate Park which is developed by Mayfair Spaces Ltd. (respondent) which is an associated entity of the respondent. Delivery challans are duly signed and stamped by the respondent. Therefore, respondent cannot dispute the said invoices.

ii. The 14 invoices raised against the respondent amount to Rs. 08,53,775/- have been acknowledged with the seal and stamp of respondent.

iii. The ledger account placed on record by the appellant is in-tune with claims of the appellant.

iv. Within three years from the date of acknowledgment, the application is filed. Thus, it is within limitation.

7. Per contra, ld. counsel for the respondent has made the following submissions:

i. The appellant has failed to establish that there is an Operational Debt of more than Rs. 1 lac due to it from the respondent. As per ledger only Rs. 70,165/- is due which is less than Rs. 1 lac. Therefore, the application under section 9 is not maintainable.

ii. The respondent has never supplied the copy of ledger account to the appellant. The copy of the ledger account produced by the appellant is unsigned and source of procurement is not disclosed. Therefore, it cannot be relied upon.

iii. The appellant has supplied the goods to Mayfair Corporate Park but erroneously raised the disputed bills to the respondent. Thus, there is a pre-existing dispute in regard to payment of these invoices.

iv. The appellant has claimed Rs. 20,63,340/- without filing any statement of accounts.

v. The section 9 application could not have been decided only on the basis of absence of reply to demand notice.

8. After hearing the arguments of ld. counsel for the parties we have perused the record.

9. The Hon'ble Supreme Court in Mobilox Innvations Pvt. Ltd. Vs. Kirussa Software Pvt. Ltd. 2017 1 SCC Online SC 353 held as to what are facts to be examined by the Adjudicating Authority while examining an Application under Section 9 of I & B Code which is as follows: -

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

*(i) Whether there is an “Operational Debt” as defined exceeding Rs. 1 Lakh? (See Section 4 of the Act)*

- (ii) *Whether the documentary evidence furnished with the application shows that the aforesaid debt is due and payable and has not yet been paid? And*
- (iii) *Whether there is existence of a dispute between the parties or the record of the pendency of a suit or arbitration proceeding filed before the receipt of the demand notice of the unpaid operational debt in relation to such dispute? If any one of the aforesaid conditions is lacking, the application would have to be rejected. Apart from the above, the adjudicating authority must follow the mandate of Section 9, as outlined above, and in particular the mandate of Section 9(5) of the Act, and admit or reject the Application, as the case may be, depending upon the factors mentioned in Section 9(5) of the Act.”*

10. In the light of this pronouncement firstly we examined whether there is an operational debt exceeding Rs. 1 lac as defined under Section 4 of the I&B Code. In the application under Section 9 of the I&B Code, it is mentioned that appellant has supplied ready-mix concrete material to respondent for their various construction sites from 30/09/2012 to 20/10/2014 for which various invoices were issued from time to time as against the total outstanding payment of Rs. 02,29,94,288/-. The respondent (Corporate Debtor) has paid a sum of Rs. 02,09,30,948/- and balance of Rs. 20,63,340/- is outstanding as on 11/11/2015.

11. The respondent denied this fact and according to him as per the ledger, the outstanding amount is only Rs. 70,165/-. In support of this contention, the respondent filed ledger account of appellant maintained by the respondent for period of 01/04/2012 to 20/03/2018. (See Page 97-102 of Appeal Paper Book) The respondent has produced its statement of accounts which clearly shows that the total amount outstanding against the appellant is Rs. 70,165/- which is less than Rs. 1 lac. The appellant has not pointed out any error in the statement of account filed by the respondent.

12. In rebuttal, the Appellant has filed the ledger account of the appellant, copy of which served by the respondent upon appellant. In this ledger account the amount payable to appellant is shown as Rs.19,89,130/-.

13. The respondent has taken a serious objection that the respondent's officer has not supplied any such copy of ledger account to the appellant. Such unsigned copy cannot be relied upon.

14. We have considered the objection in regard to the ledger account filed by the appellant (please see pg. 117-122 of the appeal paper-book). It is true that this ledger account is not signed by anybody and the appellant has not disclosed the name of respondent's officer who has supplied the copy of this ledger account. The copy of ledger account which is filed by the respondent is also an unsigned document. It is not argued on behalf of the respondent that the ledger account filed by the appellant is forged or fabricated. We are of the view that the ledger account filed by the appellant is genuine and shows the true picture. Thus, it is a reliable document.

15. We have reconciled these ledger accounts. We noted that following 17 items are missing in the copy of ledger account filed by the respondent which are as under:

DATE	PARTICULARS	VCH TYPE	VCH NUME	CREDIT/DEBIT
09/10/12	BY Pur-Cement Rmc (Sunrise)	Purchase	574	1,42,800
10/10/12	By Pur-Cement Rmc (Address)	Purchase	577	33,320
10/10/12	By Pur-Cement Rmc (Address)	Purchase	578	8,920
03/05/13	By Pur-Cement Rmc (Address)	Purchase	72	31,220
13/06/13	By Pur-Cement Rmc (Address)	Purchase	344	17,840
11/07/13	By Pur-Cement Rmc (Address)	Purchase	529	31,220
12/08/13	By Pur-Cement & RMC Millenium	Purchase	711	9,520
12/08/13	By Pur-Cement Bag	Purchase	712	1,80,880
12/08/13	By Pur-Cement Bag	Purchase	731	5,33,120
28/10/13	By Pur-Cement Rmc (Address)	Purchase	1209	5,16,460
20/11/13	By Pur-Cement & RMC (Eklavya)	Purchase	1321	13,380
22/11/13	By Pur-Cem & RMC (Eklavya)	Purchase	1341	13,380
25/11/13	By Pur-Cement & RMC (Eklavya)	Purchase	1358	3,345
19/12/13	By Pur-Cem & RMC (Eklavya)	Purchase	1527	15,610
19/12/13	By Pur-Cem & RMC (Eklavya)	Purchase	1529	1,09,270
19/12/13	By Pur-Cem & RMC (Eklavya)	Purchase	1530	95,890
22/01/14	By Pur-Cem & RMC (Eklavya)	Purchase	1744	1,62,790
				Total = 19,18,965

16. Following ledger account is filed by the Appellant, in this account above referred items are shown in the box however, these items are missing in the ledger account (See Page 97-102 of Appeal Paper Book) filed by the Respondent.



## Northway Spaces Limited

5-9/10, Essen House,  
BIDC, Gorwa,  
Vadocara

CIN: U70106GJ2007PLC050205

## MCC CONCRETE

Ledger Account

SURVEY NO 109, B/H KRISHNA KATHIYAWADI HOTEL,  
N H NO 8 VILLAGE DUMAD  
0265-2760791/

1-Jan-2001 to 10-Oct-2017

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Date	Particulars	Vch Type	Vch No	Debit	Credit
30-9-2012	By Pur-Cement & Rmc(Twin Tower)	Purchase	511		13,380.00
	By Pur-Cement Rmc (Sunrise)	Purchase	512		23,415.00
2-10-2012	By Pur-Cement & Rmc(Signature)	Purchase	545		22,300.00
3-10-2012	By Pur-Cement Rmc (Sunrise)	Purchase	548		11,150.00
4-10-2012	By Pur-Cement & Rmc(Signature)	Purchase	552		12,265.00
4-10-2012	By Pur-Cement Rmc (Sunrise)	Purchase	553		20,070.00
10-10-2012	By Pur-Cement & Rmc(Signature)	Purchase	550		14,495.00
	By Pur-Cement&Rmc	Purchase	551		17,840.00
7-10-2012	By Pur-Cement & Rmc(Signature)	Purchase	552		15,610.00
	By Pur-Cement Rmc (Sunrise)	Purchase	553		48,830.00
8-10-2012	By Pur-Cement & Rmc(Signature)	Purchase	558		13,380.00
	By Pur-Cement&Rmc	Purchase	558		26,180.00
9-10-2012	By Pur-Cement Rmc (Sunrise)	Purchase	574		1,42,800.00
10-10-2012	By Pur-Cement & Rmc(Address)	Purchase	577		33,320.00
	By Pur-Cement & Rmc(Address)	Purchase	578		8,920.00
12-10-2012	By Pur-Cement & Rmc(Signature)	Purchase	588		10,035.00
14-10-2012	By Pur-Cement Rmc (Sunrise)	Purchase	595		20,070.00
	By Pur-Cement Rmc (Sunrise)	Purchase	598		83,300.00
15-10-2012	By Pur-Cement&Rmc	Purchase	598		61,880.00
	By Pur-Cement Rmc (Sunrise)	Purchase	599		26,180.00
17-10-2012	By Pur-Cement Rmc (Sunrise)	Purchase	607		31,220.00
18-10-2012	By Pur-Cement & Rmc(Signature)	Purchase	612		1,13,050.00
	By Pur-Cement Rmc (Sunrise)	Purchase	613		6,690.00
25-10-2012	By Pur-Cement & Rmc(Twin Tower)	Purchase	637		5,99,760.00
27-10-2012	By Pur-Cement & Rmc(Twin Tower)	Purchase	640		66,640.00
1-10-2012	By Pur-Cement & Rmc(Twin Tower)	Purchase	661		8,920.00
1-11-2012	By Pur-Cement Rmc (Sunrise)	Purchase	673		45,715.00
7-11-2012	By Pur-Cement Rmc (Sunrise)	Purchase	688		1,45,180.00
25-11-2012	To Axis Bank (912020032063493)	Payment	2242	2,03,485.00	
27-11-2012	By Pur-Cement Rmc (Sunrise)	Purchase	711		44,600.00
3-12-2012	By Pur-Cement Rmc (Sunrise)	Purchase	731		95,200.00
8-12-2012	To Diamond Power Infrastructure Ltd	Journal	1138	10,00,605.00	
18-12-2012	To Axis Bank (912020032063493)	Payment	2475	2,50,000.00	
23-12-2012	By Pur-Cement Rmc (Sunrise)	Purchase	831		16,660.00
1-1-2013	By Pur-Cement Rmc (Sunrise)	Purchase	857		1,33,260.00
	By Pur-Cement Rmc (Sunrise)	Purchase	861		21,185.00
3-1-2013	By Pur-Cement Rmc (Sunrise)	Purchase	881		55,750.00
4-1-2013	To Axis Bank (912020032063493)	Payment	2662	1,02,605.00	
7-1-2013	By Pur-Cement Rmc (Sunrise)	Purchase	901		47,945.00
8-1-2013	By Pur-Cement Rmc (Sunrise)	Purchase	905		31,220.00
15-1-2013	By Pur-Cement & Rmc(Signature)	Purchase	917		1,38,040.00
	By Pur-Cement Rmc (Sunrise)	Purchase	922		1,60,650.00
	By Pur-Cement & Rmc(Twin Tower)	Purchase	923		6,890.00
12-1-2013	By Pur-Cement Rmc (Sunrise)	Purchase	934		1,46,370.00
	By Pur-Cement Rmc (Sunrise)	Purchase	935		1,83,260.00
	By Pur-Cement Rmc (Sunrise)	Purchase	936		1,45,180.00
	Carried Over			15,56,675.00	29,66,625.00

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## Northway Spaces Limited

MCC CONCRETE Ledger Account : 1-Jan-2001 to 10-Oct-2017

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Date	Particulars	Vch Type	Vch No.	Debit	Credit
	Brought Forward			15,56,675.00	28,66,625.00
12-1-2013	By Pur-Cement Rmc (Sunrise)	Purchase	937		78,050.00
	By Pur-Cement Rmc (Sunrise)	Purchase	938		45,220.00
	By Pur-Cement Rmc (Sunrise)	Purchase	939		13,380.00
	By Pur-Cement & Rmc(Twin Tower)	Purchase	940		37,910.00
17-1-2013	By Pur-Cement Rmc (Sunrise)	Purchase	955		1,43,990.00
	By Pur-Cement & Rmc(Twin Tower)	Purchase	957		7,33,040.00
33-1-2013	By Pur-Cement Rmc (Sunrise)	Purchase	1019		1,77,310.00
7-2-2013	To Kotak Mahindra Bank (08412180000303)	Payment	3068	10,95,900.00	
18-2-2013	By Pur-Cement Rmc (Sunrise)	Purchase	1105		31,220.00
	By Pur-Cement Rmc (Sunrise)	Purchase	1107		15,610.00
	By Pur-Cement Rmc (Sunrise)	Purchase	1108		1,49,940.00
20-2-2013	By Pur-Cement & Rmc(Twin Tower)	Purchase	1112		15,610.00
	By Pur-Cement & Rmc(Twin Tower)	Purchase	1113		33,320.00
26-2-2013	To Kotak Mahindra Bank (08412180000303)	Payment	3298	11,50,730.00	
27-2-2013	By Pur-Cement & Rmc(Address)	Purchase	1142		43,485.00
2-3-2013	By Pur-Cement & Rmc(Twin Tower)	Purchase	1162		78,050.00
4-3-2013	By Pur-Cement & Rmc(Address)	Purchase	1170		78,050.00
5-3-2013	By Pur-Cement Rmc (Sunrise)	Purchase	1180		1,42,800.00
7-3-2013	By Pur-Cement & Rmc(Address)	Purchase	1186		1,33,200.00
11-3-2013	By Pur-Cement & Rmc(Twin Tower)	Purchase	1218		6,690.00
12-3-2013	By Pur-Cement & Rmc(Address)	Purchase	1237		49,980.00
13-3-2013	By Pur-Cement & Rmc(Address)	Purchase	1247		39,025.00
14-3-2013	By Pur-Cement & Rmc(Twin Tower)	Purchase	1252		2,16,580.00
15-3-2013	By Pur-Cement Rmc (Sunrise)	Purchase	1258		11,150.00
	By Pur-Cement Rmc (Sunrise)	Purchase	1259		1,42,800.00
	By Pur-Cement Rmc (Sunrise)	Purchase	1260		1,42,800.00
	By Pur-Cement & Rmc(Address)	Purchase	1261		46,830.00
17-3-2013	By Pur-Cement & Rmc(Twin Tower)	Purchase	1292		11,150.00
19-3-2013	To Kotak Mahindra Bank (08412180000303)	Payment	3587	5,81,405.00	
22-3-2013	To Indian Overseas Bank (10502000010505)	Payment	3652	10,00,000.00	
	By Pur-Cement & Rmc(Address)	Purchase	1331		74,705.00
23-3-2013	By Pur-Cement Rmc (Sunrise)	Purchase	1332		1,42,800.00
	By Pur-Cement Rmc (Sunrise)	Purchase	1333		1,42,800.00
	By Pur-Cement & Rmc(Address)	Purchase	1334		2,16,580.00
	By Pur-Cement & Rmc(Twin Tower)	Purchase	1335		2,07,060.00
	By Pur-Cement & Rmc(Address)	Purchase	1336		1,99,920.00
	By Pur-Cement Rmc (Sunrise)	Purchase	1337		1,45,180.00
	By Pur-Cement & Rmc(Address)	Purchase	1338		84.700
	By Pur-Cement & Rmc(Address)	Purchase	1339		31,220.00
	By Pur-Cement & Rmc(Address)	Purchase	1340		35,680.00
	By Pur-Cement Rmc (Sunrise)	Purchase	1341		15,610.00
	By Pur-Cement & Rmc(Twin Tower)	Purchase	1342		13,43,998.00
24-3-2013	By Pur-Cement & Rmc(Twin Tower)	Purchase	1347		1,58,400.00
				53,84,710.00	82,82,588.00
	To Closing Balance			28,97,878.00	
				82,82,588.00	82,82,588.00
1-4-2013	By Opening Balance				28,97,878.00
17-4-2013	To Kotak Mahindra Bank (08412180000303)	Payment	190	7,23,700.00	
3-5-2013	By Pur-Cement & Rmc(Twin Tower)	Purchase	62		1,64,220.00
	By Pur-Cement & Rmc(Twin Tower)	Purchase	63		15,610.00
	By Pur-Cement & Rmc(Twin Tower)	Purchase	64		49,980.00
	By Pur-Cement & Rmc(Twin Tower)	Purchase	65		15,610.00
	By Pur-Cement & Rmc(Twin Tower)	Purchase	66		1,66,600.00
	By Pur-Cement & Rmc(Address)	Purchase	67		11,900.00
	By Pur-Cement & Rmc(Address)	Purchase	68		18,955.00
	Carried Over			7,23,700.00	33,40,753.00

continued.



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Northway Spaces Limited  
 M/CC CONCRETE Ledger Account : 1-Jan-2001 to 10-Oct-2017

Date	Particulars	Vch Type	Vch No.	Debit	Credit
	Brought Forward			7,23,700.00	33,40,753.00
3-5-2013	By Pur-Cement & Rmc(Address)	Purchase	69	2,05,870.00	
	By Pur-Cement & Rmc(Address)	Purchase	70	31,220.00	
	By Pur-Cement & Rmc(Address)	Purchase	71	31,220.00	
	By Pur-Cement & Rmc(Address)	Purchase	72	31,220.00	
	By Pur-Cement & Rmc(Address)	Purchase	73	6,600.00	
	By Pur-Cement & Rmc(Address)	Purchase	74	31,220.00	
	By Pur-Cement & Rmc(Address)	Purchase	75	15,610.00	
	By Pur-Cement & Rmc(Address)	Purchase	76	46,830.00	
	By Pur-Cement & Rmc(Address)	Purchase	77	31,220.00	
	By Pur-Cement & Rmc(Address)	Purchase	78	21,185.00	
9-5-2013	To Kotak Mahindra Bank (0841216000303)	Payment	434	9,88,710.00	
22-5-2013	By Pur-Cement & Rmc(Twin Tower)	Purchase	181	61,860.00	
	By Pur-Cement & Rmc(Twin Tower)	Purchase	182	1,65,600.00	
	By Pur-Cement & Rmc(Address)	Purchase	183	1,71,360.00	
	By Pur-Cement & Rmc(Address)	Purchase	184	31,220.00	
	By Pur-Cement & Rmc(Address)	Purchase	185	8,920.00	
31-5-2013	By Pur-Cement & Rmc(Address)	Purchase	188	39,025.00	
	By Pur-Cement & Rmc(Address)	Purchase	223	93,680.00	
	By Pur-Cement & Rmc(Address)	Purchase	224	15,610.00	
	By Pur-Cement & Rmc(Address)	Purchase	225	15,610.00	
	By Pur-Cement & Rmc(Address)	Purchase	226	28,990.00	
	By Pur-Cement & Rmc(Address)	Purchase	227	24,530.00	
13-6-2013	By Pur-Cement & Rmc(Address)	Purchase	228	10,035.00	
	By Pur-Cement & Rmc(Address)	Purchase	323	6,690.00	
	By Pur-Cement & Rmc(Address)	Purchase	324	31,220.00	
	By Pur-Cement & Rmc(Address)	Purchase	325	46,830.00	
	By Pur-Cement & Rmc(Address)	Purchase	326	10,035.00	
	By Pur-Cement & Rmc(Address)	Purchase	327	8,920.00	
	By Pur-Cement & Rmc(Address)	Purchase	328	23,415.00	
	By Pur-Cement & Rmc(Address)	Purchase	329	37,910.00	
	By Pur-Cement & Rmc(Address)	Purchase	330	30,105.00	
	By Pur-Cement & Rmc(Address)	Purchase	331	12,265.00	
	By Pur-Cement & Rmc(Address)	Purchase	332	17,840.00	
	By Pur-Cement & Rmc(Address)	Purchase	333	4,480.00	
	By Pur-Cement & Rmc(Address)	Purchase	334	1,42,800.00	
	By Pur-Cement & Rmc(Address)	Purchase	335	1,32,886.00	
	By Pur-Cement & Rmc(Twin Tower)	Purchase	338	1,45,180.00	
	By Pur-Cement & Rmc(Address)	Purchase	337	31,220.00	
	By Pur-Cement & Rmc(Address)	Purchase	338	49,060.00	
	By Pur-Cement & Rmc(Address)	Purchase	339	15,610.00	
	By Pur-Cement & Rmc(Address)	Purchase	340	15,610.00	
	By Pur-Cement & Rmc(Address)	Purchase	341	15,610.00	
	By Pur-Cement & Rmc(Address)	Purchase	342	15,610.00	
	By Pur-Cement & Rmc(Address)	Purchase	343	15,610.00	
	By Pur-Cement & Rmc(Address)	Purchase	344	17,840.00	
	By Pur-Cement & Rmc(Address)	Purchase	345	18,955.00	
	By Pur-Cement & Rmc(Twin Tower)	Purchase	346	6,33,080.00	
	By Pur-Cement & Rmc	Purchase	347	13,380.00	
	By Pur-Cement Rmc (Sunrise)	Purchase	348	31,220.00	
	By Pur-Cement Rmc (Sunrise)	Purchase	349	1,33,280.00	
	By Pur-Cement & Rmc(Address)	Purchase	350	74,705.00	
2-7-2013	To Axis Bank (012020032063493)	Payment	1074	15,00,000.00	
11-7-2013	By Pur-Cement & Rmc(Address)	Purchase	515	13,380.00	
	By Pur-Cement & Rmc(Address)	Purchase	516	13,380.00	
	By Pur-Cement & Rmc	Purchase	519	31,220.00	
	By Pur-Cement & Rmc(Address)	Purchase	520	31,220.00	
	Carried Over			32,32,410.00	62,80,623.00

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Northway Spaces Limited  
MCC CONCRETE Ledger Account : 1-Jan-2001 to 10-Oct-2017

Date	Particulars	Vch Type	Vch No.	Debit	Credit
	Brought Forward			32,12,410.00	62,80,823.00
					6,690.00
11-7-2013	By Pur-Cement & Rmc(Address)	Purchase	521		31,220.00
	By Pur-Cement & Rmc(Address)	Purchase	522		15,610.00
	By Pur-Cement & Rmc(Address)	Purchase	523		26,760.00
	By Pur-Cement & Rmc(Address)	Purchase	524		24,530.00
	By Pur-Cement & Rmc(Address)	Purchase	525		36,795.00
	By Pur-Cement & Rmc(Address)	Purchase	526		18,955.00
	By Pur-Cement & Rmc(Address)	Purchase	527		14,495.00
	By Pur-Cement & Rmc(Address)	Purchase	528		31,220.00
	By Pur-Cement & Rmc(Address)	Purchase	529		31,220.00
	By Pur-Cement & Rmc(Address)	Purchase	530		21,165.00
	By Pur-Cement & Rmc(Address)	Purchase	531		17,840.00
	By Pur-Cement & Rmc(Address)	Purchase	532		49,690.00
	By Pur-Cement & Rmc(Address)	Purchase	533		5,575.00
	By Pur-Cement & Rmc(Address)	Purchase	534		16,725.00
	By Pur-Cement & Rmc(Address)	Purchase	535		10,035.00
	By Pur-Cement & Rmc(Address)	Purchase	536		13,380.00
	By Pur-Cement & Rmc(Address)	Purchase	537		31,220.00
	By Pur-Cement & Rmc(Address)	Purchase	538		35,680.00
	By Pur-Cement & Rmc(Address)	Purchase	539		9,520.00
	By Pur-Cement & Rmc(Address)	Purchase	540		1,22,650.00
	By Pur-Cement & Rmc	Purchase	541		22,300.00
	By PUR CEMENT & RMC MILLENIUM	Purchase	542		99,990.00
	By PUR CEMENT & RMC MILLENIUM	Purchase	543		54,740.00
	By PUR CEMENT & RMC MILLENIUM	Purchase	544		2,33,240.00
	By PUR CEMENT & RMC MILLENIUM	Purchase	545		2,49,900.00
	By Pur-Cement Bag []	Purchase	546		1,83,260.00
	By Pur-Cement Bag []	Purchase	547		11,150.00
	By Pur-Cement Bag []	Purchase	548		66,900.00
	By PUR CEMENT & RMC MILLENIUM	Purchase	549		33,320.00
	By PUR CEMENT & RMC MILLENIUM	Purchase	550		1,33,800.00
	By PUR CEMENT & RMC MILLENIUM	Purchase	551		10,00,000.00
	By PUR CEMENT & RMC MILLENIUM	Purchase	1329		21,185.00
21-7-2013	To Axis Bank (912020032063493)	Payment	709		9,520.00
12-8-2013	By PUR CEMENT & RMC MILLENIUM	Purchase	711		1,80,880.00
	By PUR CEMENT & RMC MILLENIUM	Purchase	712		48,830.00
	By Pur-Cement Bag []	Purchase	713		8,920.00
	By PUR CEMENT & RMC MILLENIUM	Purchase	714		33,320.00
	By Pur-Cement & Rmc(Address)	Purchase	715		17,840.00
	By PUR CEMENT & RMC MILLENIUM	Purchase	716		6,920.00
	By Pur-Cement & Rmc(Address)	Purchase	717		31,220.00
	By Pur-Cement & Rmc(Twin Tower)	Purchase	718		6,690.00
	By PUR CEMENT & RMC MILLENIUM	Purchase	719		3,47,480.00
	By Pur-Cement & Rmc(Address)	Purchase	720		20,070.00
	By Pur-Cement & Rmc(Address)	Purchase	721		15,610.00
	By Pur-Cement & Rmc(Address)	Purchase	722		46,830.00
	By Pur-Cement & Rmc(Address)	Purchase	723		98,120.00
	By PUR CEMENT & RMC MILLENIUM	Purchase	724		46,830.00
	By PUR CEMENT & RMC MILLENIUM	Purchase	725		6,690.00
	By PUR CEMENT & RMC MILLENIUM	Purchase	727		8,920.00
	By Pur-Cement & Rmc(Address)	Purchase	728		7,805.00
	By Pur-Cement & Rmc(Address)	Purchase	729		8,920.00
	By Pur-Cement & Rmc(Address)	Purchase	730		5,33,120.00
	By Pur-Cement & Rmc(Address)	Purchase	731		15,00,000.00
	By Pur-Cement Bag []	Purchase	1600		11,150.00
21-8-2013	To Axis Bank (912020032063493)	Payment	881		1,16,620.00
1-10-2013	By Pur-Cement & Rmc(Address)	Purchase	882		
	By Pur-Cement & Rmc(Address)	Purchase		57,12,410.00	95,74,168.00

Carried Over continued...

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Northway Spaces Limited  
MCC CONCRETE Ledger Account : 1-Jan-2001 to 10-Oct-2017

Date	Particulars	Vch Type	Vch No.	Debit	Credit
	Brought Forward			57,12,410.00	95,74,168.00
3-13-2013	By Pur-Cement Rmc (Sunrise)	Purchase	983		1,16,620.00
	By Pur-Cement & Rmc(Address)	Purchase	-984		8,920.00
	By Pur-Cement & Rmc(Address)	Purchase	985		18,955.00
4-10-2013	To Axis Bank (912020032063493)	Payment	2016	22,00,000.00	
	To Axis Bank (912020032063493)	Payment	2042	8,00,000.00	
10-10-2013	By PUR CEMENT & RMC MILLENIUM	Purchase	-1028		33,450.00
10-10-13	By PUR CEMENT & RMC MILLENIUM	Purchase	1029		31,220.00
	By PUR CEMENT & RMC MILLENIUM	Purchase	1030		8,920.00
	By Pur-Cement & Rmc(Address)	Purchase	1033		24,530.00
	By Pur-Cement & Rmc(Twin Tower)	Purchase	-1034		15,610.00
	By Pur-Cement & Rmc(Address)	Purchase	1035		25,645.00
	By PUR CEMENT & RMC MILLENIUM	Purchase	-1036		16,600.00
1-4-13	By Pur-Cement & Rmc(Address)	Purchase	-1037		24,530.00
	By PUR CEMENT & RMC MILLENIUM	Purchase	1038		90,960.00
	By PUR CEMENT & RMC MILLENIUM	Purchase	-1039		1,92,780.00
15-10-2013	By PUR CEMENT & RMC MILLENIUM	Purchase	1040		44,800.00
	By Pur-Cement & Rmc(Address)	Purchase	-1048		18,955.00
	By Pur-Cement & Rmc(Twin Tower)	Purchase	-1206		5,16,400.00
31-10-2013	To AXIS BANK C.C. A/C (913030044487854)	Payment	2473	10,00,000.00	
	By AXIS BANK C.C. A/C (913030044487854)	Receipt	656		10,00,000.00
20-11-2013	By PUR-CEMENT & RMC (EKLAHYA)	Purchase	-1321		13,380.00
20-11-13	By Pur-Cement & Rmc(Address)	Purchase	1322		5,16,400.00
22-11-2013	By PUR-CEMENT & RMC (EKLAHYA)	Purchase	-1334		6,600.00
	By Pur-Cement & Rmc(Address)	Purchase	-1335		11,150.00
	By Pur-Cement & Rmc(Address)	Purchase	1336		46,830.00
	By Pur-Cement & Rmc(Address)	Purchase	1337		14,495.00
	By Pur-Cement & Rmc(Address)	Purchase	1339		21,185.00
	By Pur-Cement & Rmc(Address)	Purchase	1339		20,070.00
	By PUR CEMENT & RMC MILLENIUM	Purchase	-1340		11,150.00
	By PUR-CEMENT & RMC (EKLAHYA)	Purchase	-1341		13,380.00
	By Pur-Cement & Rmc(Address)	Purchase	1342		27,875.00
20-11-2013	By PUR-CEMENT & RMC (EKLAHYA)	Purchase	-1358		3,345.00
31-12-2013	To AXIS BANK C.C. A/C (913030044487854)	Payment	2880	10,00,000.00	
4-12-2013	By PUR CEMENT & RMC MILLENIUM	Purchase	-1411		3,345.00
	By Pur-Cement&Rmc	Purchase	1412		28,900.00
	By Pur-Cement Bag []	Purchase	1413		3,16,540.00
14-12-2013	By Pur-Cement Rmc (Sunrise)	Purchase	-1504		54,740.00
14-12-13	By PUR-CEMENT & RMC (EKLAHYA)	Purchase	-1505		13,380.00
	By PUR CEMENT & RMC MILLENIUM	Purchase	1506		66,640.00
17-12-2013	By PUR-CEMENT & RMC (EKLAHYA)	Purchase	-1527		15,610.00
	By PUR CEMENT & RMC MILLENIUM	Purchase	1528		40,140.00
	By PUR-CEMENT & RMC (EKLAHYA)	Purchase	-1529		1,09,270.00
	By PUR-CEMENT & RMC (EKLAHYA)	Purchase	-1530		65,600.00
	By PUR CEMENT & RMC MILLENIUM	Purchase	1532		1,23,790.00
30-12-2013	To Axis Bank (912020032063493)	Payment	3207	10,00,000.00	
22-1-2014	By Pur-Cement&Rmc	Purchase	1741		3,345.00
	By PUR CEMENT & RMC MILLENIUM	Purchase	-1742		2,61,800.00
	By PUR CEMENT & RMC MILLENIUM	Purchase	1743		28,800.00
	By PUR-CEMENT & RMC (EKLAHYA)	Purchase	1744		1,62,790.00
4-2-2014	To AXIS BANK (912020032063493)	Payment	3801	6,33,628.00	
2-3-2014	By PUR CEMENT & RMC MILLENIUM	Purchase	1940		3,33,200.00
3-3-2014	By PUR CEMENT & RMC MILLENIUM	Purchase	1943		2,38,000.00
5-3-2014	By PUR CEMENT & RMC MILLENIUM	Purchase	1951		83,300.00
29-3-2014	By PUR CEMENT & RMC MILLENIUM	Purchase	2123		2,10,500.00
29-3-14	By PUR CEMENT & RMC MILLENIUM	Purchase	2124		1,46,370.00
	By Pur-Cement Bag []	Purchase	2125		2,10,000.00
	Carried Over			1,23,46,238.00	1,50,31,243.00

continued



Northway Spaces Limited  
 MCC CONCRETE Ledger Account : 1-Jan-2001 to 10-Oct-2017

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Date	Particulars	Vch Type	Vch No.	Debit	Credit
	Brought Forward			1,23,46,238.00	1,50,31,243.00
29-3-2014	By PUR CEMENT & RMC MILLENIUM	Purchase			
	By Pur-Cement Rmc (Sunrise)	Purchase	2127	-22,300.00	
	By PUR CEMENT & RMC MILLENIUM	Purchase	2128		16,725.00
	By PUR CEMENT & RMC MILLENIUM	Purchase	2129		1,83,260.00
	By Pur-Cement & Rmc(Address)	Purchase	2130		26,180.00
	By Pur-Cement Rmc (Sunrise)	Purchase	2131	-3,33,200.00	
	By Pur-Cement Bag []	Purchase	2132		6,690.00
	By Pur-Cement Rmc (Sunrise)	Purchase	2133		76,160.00
31-3-2014	By PUR CEMENT & RMC MILLENIUM	Purchase	2134	-15,610.00	
	By PUR CEMENT & RMC MILLENIUM	Purchase	2173		2,80,600.00
	By Pur-Cement Bag []	Purchase	2174		1,19,600.00
	By PUR CEMENT & RMC MILLENIUM	Purchase	2175		6,04,900.00
			2176		1,79,400.00
	To Closing Balance			1,23,46,238.00	1,68,95,868.00
				45,49,630.00	
				1,68,95,868.00	1,68,95,868.00
1-4-2014	By Opening Balance				45,49,630.00
10-10-2014	By PUR CEMENT & RMC MILLENIUM	Purchase			
11-10-2014	To Axis Bank (912020032063493)	Payment	-1138		-2,97,570
	By PUR CEMENT & RMC MILLENIUM	Purchase	2359	8,00,000.00	
13-10-2014	To Axis Bank (912020032063493)	Payment	1148		21,250.00
14-10-2014	By Pur-Cement & Rmc(Twin Tower)	Purchase	2375	7,00,000.00	
15-10-2014	By PUR CEMENT & RMC MILLENIUM	Purchase	1162		13,050.00
17-10-2014	By PUR CEMENT & RMC MILLENIUM	Purchase	1171		3,25,125.00
19-10-2014	By PUR CEMENT & RMC MILLENIUM	Purchase	1179		3,23,000.00
20-10-2014	By PUR CEMENT & RMC MILLENIUM	Purchase	1191		1,78,500.00
10-12-2014	To Axis Bank (912020032063493)	Payment	-1193		1,93,375.00
28-2-2015	To Kotak Mahindra Bank (08412180000303)	Payment	2844	5,00,000.00	
			3797	10,00,000.00	
	To Closing Balance			30,00,000.00	59,01,430.00
				29,01,430.00	
				59,01,430.00	59,01,430.00
1-4-2015	By Opening Balance				29,01,430.00
5-11-2015	To Kotak Mahindra Bank (08412180000303)	Payment	1868	12,00,000.00	
	To Closing Balance			12,00,000.00	29,01,430.00
				17,01,430.00	
				29,01,430.00	29,01,430.00
1-4-2016	By Opening Balance				17,01,430.00
1-4-2016	By PUR CEMENT & RMC MILLENIUM	Purchase	1	1,50,000.00	
	By PUR CEMENT & RMC MILLENIUM	Purchase	2		1,37,700.00
	To Closing Balance			19,89,130.00	19,89,130.00
				19,89,130.00	19,89,130.00

17. From the above referred ledger account maintained by the respondent we hold that as on 31/03/2017, operational debt Rs. 19,89,130/- was due and payable and has not yet been paid.

18. Hon'ble Supreme Court, in the case of Mobilox Innovations Pvt. Ltd. (Supra) held that what is the scope of ascertaining the existence of a dispute at the time of admitting the Application, which is as follows:- "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."

19. Now, we have considered whether there is a pre-existing dispute between the parties. As per the respondent, the appellant has delivered goods to Mayfair Corporate Park but erroneously sent invoices dated 15/07/2013 and 18/10/2013 bearing nos. 661 and 360 amounting to Rs. 05,33,120/- and 05,16,460/-. The respondent has no connection with Mayfair Corporate Park, therefore they have returned the invoices to the appellant. According to *Company Appeal (AT) (Ins) No. 527 of 2020*

the appellant, the Mayfair Corporate Park is a construction project developed by Mayfair Spaces Ltd. (respondent) and thus they are associated entities. Therefore, the disputed invoices were rightly sent to the respondent.

21. As we have noted that the appellant is relying on the ledger account maintained by the respondent. In this ledger account the amount of disputed invoices are not shown. Therefore, we hold that there is no dispute between the parties in regard to the aforesaid invoices. Thus, we do not agree with the finding of Id. Adjudicating Authority that there is a pre-existing dispute between the parties.

22. Now, we have considered the objection of Id. counsel for the respondent that the claim is barred by limitation. The ledger account is a running account which shows that on 05/11/2015, the respondent has made payment of Rs. 12 lacs to appellant and from this date of acknowledgment within three years, that is on 15/01/2018 the application is filed. Thus, the application is within period of limitation. We agree with the finding of the Adjudicating Authority that the application is filed within the period of limitation.

23. Id. Adjudication Authority while examining the application under Section 9 of I&B Code has not considered the ledger account filed by the appellant. The statement shows that there is an outstanding due of Rs. 19,89,130/- on 31/03/2017. There is no pre-existing dispute. The Adjudicating Authority erroneously rejected the claim on the ground that the claim raised by the appellant falls within the ambit of disputed claim.

24. From the record, as we find that the respondent has failed to pay more than Rs. 1 lac and in absence of any pre-existing dispute and the record being *Company Appeal (AT) (Ins) No. 527 of 2020*



complete, we hold that the application under section 9 of I&B Code preferred by the appellant was fit to be admitted.

25. For the reasons aforesaid, we set aside the impugned order dated 12/02/2020 and remit the case to the Adjudicating Authority for admitting the application under Section 9 of I&B Code after notice to the Corporate Debtor to enable the Corporate Debtor to settle the matter prior to admission.

26. The appeal is allowed with the aforesaid observations and directions.  
No costs.

**[Justice Jarat Kumar Jain]**  
**Member (Judicial)**

**[Balvinder Singh]**  
**Member (Technical)**

**NEW DELHI**  
**22<sup>nd</sup> January, 2021.**  
SC