

IN THE NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD
DIVISION BENCH
COURT - 1

ITEM No.204
CP(IB) 149 of 2020

Proceedings under Section 9 IBC

IN THE MATTER OF:

Suryansh Merchandise India Ltd
V/s
Gujarat Ambuja Exports Ltd

.....Applicant

.....Respondent

Order delivered on: 16/05/2024

Coram:

Mr. Shammi Khan, Hon'ble Member(J)
Mr. Sameer Kakar, Hon'ble Member(T)

PRESENT:

For the Applicant :
For the Respondent :

ORDER

The case is fixed for pronouncement of the order. The order is pronounced in the open Court, vide separate sheet.

-Sd-
SAMEER KAKAR
MEMBER (TECHNICAL)

-Sd-
SHAMMI KHAN
MEMBER (JUDICIAL)

**BEFORE THE ADJUDICATING AUTHORITY
NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD BENCH
COURT-I**

CP (IB) No.149/AHM/2020

(An application under Section 9 of the Insolvency and Bankruptcy Code, 2016 read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016)

In the Matter of:

SURYANSH MERCHANDISE INDIA LIMITED

(CIN: U10100UP2004PLC029237)

Registered office at

B-27/63-D-I 63-E-I,

Durgakund Varanasi, UP-221005.

...Applicant/Operational Creditor

VERSUS

GUJARAT AMBUJA EXPORTS LIMITED

(CIN: L15140GJ1991PLC016151)

Registered office at

Ambuja Tower, Opp. Sindhu Bhavan,

Sindhu Bhavan Road,

Bodakdev, P.O. Thaltej,

Ahmedabad

Gujarat — 380059.

...Respondent/Corporate Debtor

Order Pronounced On: 16.05.2024

CORAM:

SH. SHAMMI KHAN, HON'BLE MEMBER (JUDICIAL)

SH. SAMEER KAKAR, HON'BLE MEMBER (TECHNICAL)

APPEARANCE:

For the Applicant : Mr. Pranav D. Thakkar, Advocate

For the Respondent : Mr. Vishal Dave, Advocate.

ORDER

1. The Present Application is filed on 04.02.2020 by the Applicant - M/s. Suryansh Merchandise India Limited (hereinafter referred to as **“Operational Creditor”**) against the Respondent - M/s. Gujarat Ambuja Exports Limited (hereinafter referred to as **“Corporate Debtor”**) under Section 9 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as **“IBC, 2016”**) read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 (hereinafter referred to as **“IB (AAA) Rules, 2016”**) for initiation of Corporate Insolvency Resolution Process (**CIRP**), to appoint Interim Resolution Professional (hereinafter referred to as **“IRP”**) and declare the moratorium for having defaulted payment of the operational debt of **Rs.64,24,389.72ps.** including interest.

2. A perusal of Part-I of the Form-5 reveals that this application is filed by authorized signatory of Operational Creditor, Mr. Suyash Agrawal who has been authorised by an Authority letter/Board Resolution dated 24.07.2019 which is annexed as Annexure-L at page – 94. The Operational Creditor is having CIN No. U10100UP2004PLC029237. The Operational Creditor was incorporated under the Companies Act, 1956 and having registered office at B. 27/63-D-I, 63-E-I, Durgakund, Varanasi, UP – 221005.
3. On perusal of Part-II of the Form-5, it reveals that the Corporate Debtor is one Gujarat Ambuja Exports Limited having CIN: L15140GJ1991PLC016151. The Corporate Debtor was incorporated on 21.08.1991 and having registered office at Ambuja Tower, Opp. Sindhu Bhavan, Sindhu Bhavan Road, Bodakdev, P.O. Thaltej, Ahmedabad, Gujarat – 380059.
4. On perusal of Part-III of the Form-5 it reveals that applicant has not named any IRP under section 13 (1)(c) of the Code to act as Interim Resolution Professional (**IRP**).

5. On perusal of Part-IV of the Form-5 it reveals that total operational debt as claimed by the Operational Creditor is Rs.64,24,379.72ps. consisting of Rs.59,48,509/- being principle and amount of Rs.4,75,880/- as interest up-to date. The date of default as stated to be 28.04.2019 i.e. first bill to 22.05.2019 i.e. last bill which are annexed with the Petition as **Annexure-D at page-21 to 48.**
6. It is the case of the Applicant that in the month of April, 2019 the Corporate Debtor approached to the Operational Creditor for supply of steam coal for its various projects. Subsequently Corporate Debtor issued Purchase Order No.4500207496 dated 22.04.2019 for supply of 6000 Metric Tons (MT) of steam coal totalling amount of Rs.4,53,97,500/- which is annexed with the Petition as **Annexure-C at page-20.**
7. As per one of the terms and conditions of Purchase Order, *upon receiving goods Corporate Debtor was under obligation for testing the goods by "Quality Control Department" of Corporate Debtor and if goods were rejected such goods shall be lying at place of Corporate Debtor as at Operational*

Creditor's risk & cost. The copy of Purchase Order No.4500207496 dated 22.04.2019 is produced hereunder:-

Page: 1 / 1

<p align="center">GUJARAT AMBUJA EXPORTS LTD.</p> <p>CIN - L15140GJ1991PLC016151 Regd. Off.: "Ambuja Tower" Opp. Siddhu Bhawan, Siddhu Bhawan Road, Bodakdev, Gujarat - India Phone : +91-79-61556677 Fax : +91-79-61556678 Uttarakhand-Power Plant C-60(c), Eldeco Sidcul Ind. Area Udham Singh Nagar 262405</p>	<p align="center">DOMESTIC PURCHASE ORDER</p> <p>No: 4500207496 / 001 Date 22.04.2019</p> <p align="right" style="font-size: 2em; border: 1px solid black; border-radius: 50%; padding: 5px;">50</p> <p>GSTIN No : 05AAACG9980A1Z3 Mail: supadhny@ambujagroup.com</p>																																																															
<p>Uttarakhand, India</p> <p>Vendor's Name 800005194 - SURYANSH MERCHANDISE INDIA LIMITED SECTOR NO 2 CHANDAULI India Contact Person : SUYASH AGRAWAL Phone : 8181888111 Fax :</p>	<p>Delivery Place : GUJARAT AMBUJA EXPORTS LTD - Uttarakhand-Power Plant C-60(c), Eldeco Sidcul Ind. Area Udham Singh Nagar -262405 Uttarakhand India</p>																																																															
<p>We are pleased to confirm our order as per details given below. You are requested to supply the materials as per terms and conditions mentioned in this order.</p>																																																																
<table border="1" style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th>SNO</th> <th>Material Name</th> <th>Tax Elements</th> <th>PR No/PR Dt.</th> <th>Gross Price</th> <th>Quantity</th> <th>Unit</th> <th>Del-Dtme</th> <th>Amount (INR) Condition/Value</th> </tr> </thead> <tbody> <tr> <td>01</td> <td>STEAM COAL [INDIAN QUALITY] HSN: 2701 : SIZE 150 MM MAXIMUM GCV (ARB) 5000 MINIMUM MOIST 9-10%</td> <td></td> <td></td> <td>6,825,000</td> <td>6,000,000</td> <td>TO</td> <td>30.06.2019</td> <td>40,950,000.00</td> </tr> <tr> <td colspan="8"></td> <td>NOTE:- 1. GCV (ARB) LESS THAN 5000 K.CAL/KG WILL BE DEDUCTED PROPORTIONATELY QUALITY REPORT OF OUR LAB WILL BE FINAL AND WILL BE ACCEPTABLE TO YOU RECEIPT WEIGHT OF OUR PLANT WILL BE THE FINAL QUANTITY. DELIVERY:- 100MT. PER DAY TO BE COMPLETED BY DT 30.06.2019</td> </tr> <tr> <td colspan="4"></td> <td>PR No</td> <td>Input Tax</td> <td></td> <td></td> <td></td> </tr> <tr> <td colspan="4"></td> <td></td> <td>Cess-Qty</td> <td>400,000</td> <td>1</td> <td>2,400,000.00</td> </tr> <tr> <td colspan="4"></td> <td></td> <td>IGST</td> <td>5,000 %</td> <td></td> <td>2,047,500.00</td> </tr> <tr> <td colspan="8" style="text-align: right;">TOTAL</td> <td>45,397,500.00</td> </tr> </tbody> </table>		SNO	Material Name	Tax Elements	PR No/PR Dt.	Gross Price	Quantity	Unit	Del-Dtme	Amount (INR) Condition/Value	01	STEAM COAL [INDIAN QUALITY] HSN: 2701 : SIZE 150 MM MAXIMUM GCV (ARB) 5000 MINIMUM MOIST 9-10%			6,825,000	6,000,000	TO	30.06.2019	40,950,000.00									NOTE:- 1. GCV (ARB) LESS THAN 5000 K.CAL/KG WILL BE DEDUCTED PROPORTIONATELY QUALITY REPORT OF OUR LAB WILL BE FINAL AND WILL BE ACCEPTABLE TO YOU RECEIPT WEIGHT OF OUR PLANT WILL BE THE FINAL QUANTITY. DELIVERY:- 100MT. PER DAY TO BE COMPLETED BY DT 30.06.2019					PR No	Input Tax									Cess-Qty	400,000	1	2,400,000.00						IGST	5,000 %		2,047,500.00	TOTAL								45,397,500.00
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<p>Note1: ORIGINAL INVOICE MUST BE SENT ALONG WITH THE MATERIAL. Note2: PLEASE VERIFY HSN CODE MENTION IN THE PO. PLEASE REVERT IF THERE IS ANY DISCREPANCY.</p>																																																																
<p>OTHER TERMS: 1. Payment Terms : Payable immediately Due net 2. Incoterms : FOB Delivery FACTORY DELIVERY 3. Mode Of Dispatch :</p> <p>STANDARD TERMS & CONDITIONS (1) Supply against this purchase order shall be accepted subject to inspection of quality by our Quality Control Department. If the goods are rejected by our Quality Control Department the same shall be lying with us at supplier's risk & cost. (2) Supplies in excess of the ordered quantity shall not be accepted. (3) The goods supplied must be accompanied with challan, packing list and invoice in duplicate. (4) We reserve the right to amend/cancel this purchase order. (5) All disputes are Subject to Ahmedabad jurisdiction only PO Created By: SUPADHYAY, 22.04.2019 PO Released DH: MPAREEK, 22.04.2019, PO Released PH: MPAREEK, 22.04.2019</p>	<p>REMARKS</p> <p>For, Gujarat Ambuja Exports Ltd.</p> <p align="right">Authorised Signatory</p>																																																															



8. Accordingly, the Operational Creditor supplied 786.190 Metric Tons (MT) of Steam Coal totalling amount of Rs.59,48,509/- in tranches to the Corporate Debtor and raised various Tax invoices which dates w.e.f. 28.04.2019 to 22.05.2019 which is annexed with the Petition as **Annexure-D at page-21 to 48.**
9. However, in spite of repeatedly request to the Corporate Debtor for recovery of dues, Corporate Debtor failed to make payment to the Operational Creditor. The copy of Ledger Account as well as Computation of Outstanding amount are annexed with the Petition as **Annexure-E at page-49 to 57 & Annexure-F at page-58.**
10. There were certain communication between the Corporate Debtor and Operational Creditor qua the quality and less quantity of Coal supplied Purchase Order No.4500207496 dated 22.04.2019 by Operational Creditor through Letter dated 14.06.2019, 18.06.2019 29.06.2019 which are annexed with the Petition as **Annexure-G Colly at page 59 to 73.**

11. A Demand Notice Form-3 came to be issued on 30.07.2019 to the Corporate Debtor which along-with postal receipt as well as Tracking report of delivery are annexed with the Petition as **Annexure-H & I & J at page-74 to 83**. In response to the said Demand Notice, Corporate Debtor has issued reply cum notice of dispute dated 04.09.2019 which is annexed with the Petition as **Annexure-K at page-84 to 93**.

12. The Operational Creditor relies upon the following documents which are as under:-

- a. The purchase order dated 22.04.2019*
- b. Copy of various bills submitted to the Operational Debtor.*
- c. Copy of ledger account, where bill & payment detail shown.*
- d. Copy of computation of outstanding amount in default and interest thereon.*
- e. Copies of communications CD Letter dated 14.06.2019, OC Reply dated 18.06.2019 and CD Reply dated 29.06.2019 for recovery of outstanding dues.*
- f. Copy of Form -3 notice dated 30.07.2019.*
- g. Copy of postal receipt and postal acknowledgement.*
- h. Copy of reply dated 14.09.2019 issued by the Corporate Debtor against Operational Debtor demand notice.*

i. Copy of board resolution in favour of authorised signatory for filling of this Petition.

13. That on issuance of the notice, the Corporate Debtor has appeared and filed its reply affirmed by one Mr. Sanjay Maniar, on 22.12.2020 vide inward diary No. 10611, denying various averments made in the Application. In reply Corporate Debtor has placed following defense:-

- (i) Pre-existing dispute
- (ii) Low Quality Coal
- (iii) Less Quantity of coal Supplied.
- (iv) Back dated Demand Notice & not in proper format.
- (v) No Bank Statement filed.

14. It is stated by the Corporate Debtor that Operational Creditor has raised amount of Rs.59,49,310/- in Demand Notice. However, with malafide intention not considered the Debit Notes dated 31.05.2019 and 27.07.2019 of total amount of Rs.59,98,002/- (**Annexure-G page 64 to 72**) issued by the Corporate Debtor against the lower/poor quality of Coal as well as against less quantity Coal supplied by the Operational Creditor. It is further stated that the

amount claimed as default in the principle amount in the petition to Rs.59,48,509/-. However, no clarification was given by the Operational Creditor regarding the change/mismatch of amount.

15. It is submitted that the Corporate Debtor was purchasing coal from the Operational Creditor since 2018 and since then it is facing difficulties from the supply by Operational Creditor due to poor/low quality of supply of coal. In the year 2018, Operational Creditor promised to supply 5000 GCV on FOR basis. However, to the dismay of the Corporate Debtor, Operational Creditor failed to meet the commitments as stated under the purchase orders. The quality of supply was far too low and poor than the expected standards from the Operational Creditor. The Operational Creditor has claimed Rs.64,24,369.72ps. as allegedly defaulted amount in the petition.

16. It is pertinent to mention the importance of GCV and purchasing the same on FOR basis. GCV is gross calorific value of coal is an important yardstick for end users to

purchasing coal from suppliers as it provides clear measure of the useful energy content of a coal. It is comprised of the net calorific value plus the energy contained in the exhaust gases and in the water vapor produced during combustion.

17. FOR indicates that all liability is on seller till the goods reaches the destination of the Buyer and when this term is used quantity received at the Buyer's location shall be treated as final quantity for accounting as well as payment. This term is important in view of the fact that in certain commodities with the passage of time during transit, the quantity is reduced due to evaporation of moisture and other content and hence this term is used to indicate that weight at the location of Buyer shall be considered as final for the purpose of accounting and payment.
18. This term and its value indicated in purchase order indicates the quality of material and it is linked to price agreed upon. If the Coal is supplied with less calorific value than agreed, it will increase the consumption of the coal and

it will lead to higher cost to the purchaser. Pricing of the coal is linked to calorific value of the coal and hence if coal of inferior quality is supplied then the agreed calorific value; purchaser is put at a loss as explained above and hence normally it is agreed that deduction shall be made on the basis of GCV supplied of the coal.

19. It is stated that applicant via mail dated 20.04.2019 confirmed supply of 6000 MT team coal @ Rs. 6825/MT + 5% GST +400 PMT GST compensation cess having GCV 5000 (ARB) on for basis for the month of May and June. Only after confirmation from the applicant, Corporate Debtor has issued Purchase Order No. 4500207496/001 dated 22.04.2019 for 6000 MT on FOR basis having GCV (ARB) 5000 minimum.
20. Purchase order sent by CD dated 22.04.2019 specifically contains note: that GCV (ARB) less than 5000 K Cal/KG will be deducted proportionately and also mentioned in terms & conditions that Supply against this purchase order shall be accepted subject to inspection of quality by Corporate

Debtor's Quality control Department. If the goods are found to be inferior quality GCV(ARB) demanded: 5000 minimum Moist 9-10% GCB(ARB) less than 5000 K. Cal/ KG will be deducted proportionately. As per the said purchase order, the supply was for FOR delivery and hence quantity received at Corporate Debtor's unit at Uttaranchal was to be considered as final for settlement of account. Corporate Debtor used to share quality report with the Applicant through email dated 07.05.2019 and 09.05.2019 shared truck wise quality report of GCV and other parameters to applicant stating law quality of coal Gross Calorific Value along with lab test report which are annexed with the reply as **Annexure-F** at page 59 to 63.

21. Further, to prove the pre-existing dispute between the parties, on 28.05.2019 (Annexure-E) the Corporate Debtor wrote a letter addressing the Operational Creditor qua Purchase Order No.4500207496 dated 22.04.2019 (Annexure-I) that *“to supply due quantity within 72 hours otherwise we will be restrained to purchase the coal from the*

open market at the prevailing market price and differential amount will be debited to you”.

22. It is stated that lab tests conducted by Corporate Debtor are per norms and laws established in India. In India Coal consumers use to test the Coal, only by BIS (Bureau of Indian Standard) methods which came in to effect on 23rd Dec. 1986. ISI (Indian Standard Institute) was replaced by BIS (Bureau of Indian Standard) on 23rd Dec.1986. BIS is authorized use ISI mark and is governed by Central Govt. vide its Ministry of Consumer Affairs, Food & Public Distribution. Thus Corporate Debtor's method of testing of Coal by BIS standard No. IS 1350 covers all those parameters of testing. Copy of lab reports indicating quality of the supply is attached as **Annexure-F**.

23. It is submitted that as per PO dated 24.04.2019;

(A) The Applicant did not provide the quantity which was assured of;

(B) The material that was supplied were not as per the quality promised by the Applicant

24. Therefore, Corporate Debtor issued two debit notes against the loss suffered

A) Debit note dated 31.05.2019 of amount Rs. 10,98,785/- (Rupees ten lakh ninety eight thousand seven hundred eighty five against GCV DIFF AG supply of steam coal from 30.04.3019 to 24.05.2019 by Financial Creditor because the quality of steam coal supplied was not as demanded. **(Invoice amounting to Rs.10,98,785/- at page 65)**

B) Debit Note of amount Rs. 48,99,217.00/- (Rupee Forty-eight lakh ninety nine thousand two hundred seventeen only) dated 27.07.2019 for Rate difference/ liquidated damages for non-supply of 5222.49 MT of coal against Corporate Debtor's purchase order No. 4500207496. **(Invoice amounting to Rs. 48,99,217/- at page 71)**

Copies of the debit notes is attached hereto and marked as **Annexure-G**.

C) In total, Corporate Debtor suffered loss of Rs. 59,98,002/-. Therefore, the applicant has suppressed material facts pertaining to the transactions.

25. It is submitted that legal notice dated 24.06.2019 was sent by the Applicant seeking release of full payment against the supply of 777.510 MT coal without deducting any loss. Corporate Debtor vide reply dated 29.06.2019 asked to withdraw notice dated 24.06.2019 and supply the coal as per terms & agreement. However, Applicant failed to further fulfil its promise. Copy of the notice and reply thereof is attached as Annexure-H.
26. A letter dated 28.05.2019, 30.05.2019 and 14.06.2019 was sent to the Applicant stating non-fulfilment of contractual terms and timely supply of coal. Some of the major points raised for establishing pre-existing disputes are as follows;
- a.** In the purchase orders and its terms and conditions clearly contains that the quality report of Corporate Debtor's laboratory shall be treated as final. Despite of the same, Applicant raised standards of lab testing which is vehemently denied.
 - b.** The issues are being raised to avoid contractual obligations to supply 6000 MT of coal with quality parameters.

- c.** Debit note received by the Applicant is towards the quality parameter difference than the agreed one and supply of 777.510 MT against the PO quantity of 6000 MT
 - d.** For the pending supply of 5222.490 MT of the coal as per quality parameters agreed upon and per day quantity of 100 MT which was not complied
 - e.** Applicant was also asked whether they will supply the remaining quantity. Applicant failed to supply the requisite coal for consumption and breached the terms of the purchase order. Copy of the aforesaid letters are attached as Annexure – I.
27. It is further main contention of the Corporate Debtor that the demand notice is not as per the proper format as Mr. Raunak Parekh is not authorized to send the demand notice on behalf of operational creditor.
28. Respondent has relied upon the following documents which are annexed with the reply:
- a.** *Copy of reply of demand notice at annexure – B*
 - b.** *Copy of unaudited provisional results declared by the corporate debtor upto 30.09.2020 at annexure –C*
 - c.** *Copy of purchase order along with email is attached at Annexure –D*

- d. Copy of letter dated 28.05.2019 at annexure- E*
- e. Copy of lab reports indicating quality of the supply at Annexure-F*
- f. Copy of debit notes at Annexure-G*
- g. Copy of notice and reply thereof at Annexure-H*
- h. Copy of letter dated 28.05.2019, 30.05.2019 & 14.06.2019 along with postal receipts and tracking report at Annexure-I (Colly.)*
- i. Copy of ledged account maintained by the Corporate Debtor at Annexure-J*

29. In response to the reply of the Corporate Debtor in rebuttal no Rejoinder was filed by the Operational Creditor despite opportunities given to it.

30. In compliance of the order dated 11.10.2023, Operational Creditor has filed affidavit dated 18.11.2023 vide inward diary No. 5179 annexing the list of bills/invoices which are outstanding and they are in total number of 7 showing total balance amount of Rs.59,48,509.48ps. pending against the Purchase Order No. 4500207496 which is as under:-

31. In response to the affidavit dated 18.11.2023, CD has filed counter affidavit on 02.02.2024 vide inward diary No. 923 and stated that bill amount of the applicant is incorrect in view of the fact that goods were sold on FOR basis and hence, goods received at CD will be considered for accounting and not the goods billed.
32. The Operational Creditor as well as Corporate Debtor has filed their written synopsis and relied upon various judgments in support of their submissions which is taken on record and considered by us.
33. We have heard the arguments of Ld. Counsel for the Operational Creditor, Ld. Counsel for the Corporate Debtor and perused the material available on record.
- a.** On perusal of the records, it is found that Corporate Debtor issued Purchase Order No.4500207496 dated 22.04.2019 for supply of 6000 Metric Tons (MT) of steam coal totalling amount of Rs.4,53,97,500/-.

b. On perusal of the Purchase Order No.4500207496 dated 22.04.2019, it is found that following specific one of the Terms & Conditions:-

NOTE:- 1. GCV (ARB) LESS THAN 5000 K.CAL/KG WILL BE DEDUCTED PROPORTIONATELY.

QUALITY REPORT OF CUR LAB WILL BE FINAL AND WILL BE ACCEPTABLE TO YOU RECEIPT WEIGHT OF OUR PLANT NWLL BE THE EINAL QUANTITY.

DELIVERY:- 100MT. PER DAY TO BE COMPLETED BY DT 30.06.2019.

c. However, on perusal of the records, it is found that Operational Creditor supplied only 786.190 Metric Tons (MT) of Steam Coal totalling amount of Rs.59,48,509/- in tranches to the Corporate Debtor and raised various Tax invoices which dates w.e.f. 28.04.2019 to 22.05.2019.

d. The coal sold/supplied by the Operational Creditor to the Corporate Debtor were duly received. Corporate Debtor did not make payment to the Operational Creditor.

- e.** However, it is also observed that on 28.05.2019 (Annexure-E) the Corporate Debtor wrote a letter addressing the Operational Creditor qua Purchase Order No.4500207496 dated 22.04.2019 (Annexure-I) that *“to supply due quantity within 72 hours otherwise we will be restrained to purchase the coal from the open market at the prevailing market price and differential amount will be debited to you.”*
- f.** It is also observed that Corporate Debtor also served a Copy of Lab Test reports indicating quality of the supplied Coal GCV was less than 5000 K. Cal/Kg which is attached as **Annexure-F** which was duly served to the Applicant. The plea of the Operational Creditor, qua Lab Test Report on Excel Sheet attached as **Annexure-F** with the reply by Corporate Debtor, is not acceptable
- g.** Further, Corporate Debtor issued Debit Note dated 31.05.2019 of amount Rs.10,98,785/- against GCV DIFF AG supplied steam coal from 30.04.3019 to 24.05.2019 because the quality of steam coal supplied

was not as demanded annexed at **page 65** which was duly served to the Applicant.

- h.** Corporate Debtor also issued another Debit Note of amount Rs.48,99,217/- dated 27.07.2019 for Rate difference/ liquidated damages for non-supply of 5222.49 MT of coal against Corporate Debtor's purchase order No. 4500207496 which annexed at **page 71** which was duly served to the Applicant.
- i.** Further, admittedly there were certain communication between the Corporate Debtor and Operational Creditor qua the quality and less quantity of Coal supplied Purchase Order No.4500207496 dated 22.04.2019 by Operational Creditor through Letter dated 14.06.2019, 18.06.2019 29.06.2019 which are annexed with the Petition as **Annexure-G Colly at page 59 to 73.**
- j.** Hence, there is pre-existing dispute in terms of Section 8(2)(a) of the IB Code between the parties qua the quality as well as quantity of the Coal supplied by the Operation Creditor in respect of Purchase Order

No.4500207496 dated 22.04.2019 (Annexure-I) in terms of following specific one of the Terms & Conditions:-

NOTE:- 1. GCV (ARB) LESS THAN 5000 K.CAL/KG WILL BE DEDUCTED PROPORTIONATELY.

QUALITY REPORT OF CUR LAB WILL BE FINAL AND WILL BE ACCEPTABLE TO YOU RECEIPT WEIGHT OF OUR PLANT NWLL BE THE EINAL QUANTITY.

DELIVERY:- 100MT. PER DAY TO BE COMPLETED BY DT 30.06.2019.

34. The Hon'ble Supreme Court of India, in the matter of **'Mobilox Innovative Private Limited v. Kirusa Software Private Limited, (2018) 1 SCC 353'**, held as follows:

"40. It is clear, therefore, that once the operational creditor has filed an application, which is otherwise complete, the adjudicating authority must reject the application under Section 9(5)(2)(d) if notice of dispute has been received by the operational creditor or there is a record of dispute in the information utility. It is clear that such notice must bring to the notice of the operational creditor the "existence" of a dispute or the fact that a suit or arbitration proceeding relating to a dispute is pending between the parties. Therefore, all that the adjudicating authority is to see at this stage is whether there is a plausible contention

which requires further investigation and that the “dispute” is not a patently feeble legal argument or an assertion of fact unsupported by evidence. It is important to separate the grain from the chaff and to reject a spurious defence which is mere bluster. However, in doing so, the Court does not need to be satisfied that the defence is likely to succeed. The Court does not at this stage examine the merits of the dispute except to the extent indicated above. So long as a dispute truly exists in fact and is not spurious, hypothetical or illusory, the adjudicating authority has to reject the application.”

35. In terms of the law laid down by Hon’ble Supreme Court, in the above cited case, we are of the view, that there exists a plausibility of dispute between the parties. Hence, we are not inclined to admit the present application

36. Accordingly, this application **C.P.(IB)149(AHM)2020** is dismissed. No order as to costs.

-Sd-
SAMEER KAKAR
MEMBER (TECHNICAL)

-Sd-
SHAMMI KHAN
MEMBER (JUDICIAL)

MD, SP