

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

ITEM No.203
CP(IB) 147 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.147/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.17,60,550/-** 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 – 143. 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.17,60,550/- consisting of Rs.14,31,342/- being principle

and amount of Rs.3,29,209/- as interest @ 12% up-to date.
The date of default is stated to be **10.01.2018** i.e. first bill to **24.02.2018** i.e. last bill which are annexed with the Petition as **Annexure-F**.

6. It is the case of the Applicant that in the month of January, 2018 the Corporate Debtor approached to the Operational Creditor for supply of steam coal for its various projects. Subsequently Corporate Debtor issued Purchase Order No.4500181423 dated 08.01.2018 for supply of 2000 Metric Tons (MT) of steam coal totalling amount of Rs.1,47,60,000/- which is annexed with the Petition as **Annexure-C at page-22**.
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. 4500181423 dated 08.01.2018 is produced hereunder:-

 GUJARAT AMBUJA EXPORTS LTD. CIN - L15140GJ1991PLC016151 Regd. Off : "Ambuja Tower", Opp.Sindhu Bhavan, Sindhu Bhavan Road, Bodakdev, Ahmedabad-380059, Gujarat - India Phone : +91-79-61556677 Fax : +91-79-61556678 Uttarakhand-Power Plant C-60(c), Eldeco Sidcul Ind.Area Udham Singh Nagar 262405 Uttarakhand India	DOMESTIC PURCHASE ORDER No. 4500181423 / 001 Date 08.01.2018
	GSTIN No : 05AAACG3980A1Z3 Mail: sksharma@ambujagroup.com

Vendor's Name 8000005194 - SURYANSH MERCHANDISE INDIA LIMITED SECTOR NO 2 CHANDAULI India Contact Person : SUYASH AGRAWAL Phone : 8181888111 Fax :	Delivery Place : GUJARAT AMBUJA EXPORTS LTD Uttarakhand-Power Plant C-60(c), Eldeco Sidcul Ind.Area Udham Singh Nagar -262405 Uttarakhand India
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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.

SNO	Material Name	Tax Elements	PR No PR DL	Gross Price	Quantity	Unit	Del-Date	Amount (INR) Condition Value
01	STEAM COAL [INDIAN QUALITY] HSN: 2701 :			6,650,000	2,000,000	TO	15.02.2018	13,300,000.00
SIZE 150 MM MAXIMUM GCV 5000 MINIMUM MOIST 9-10% NOTE:- 1. GCV LESS THAN 5000 K.CAL/KG WILL BE DEDUCTED PROPORTIONATELY 2. We will allow max shortage of 2 Kg/ MT.								
PR NO: , Input Tax								
	Cess -Qty			400,000				800,000.00
	IGST			5,000 %				665,000.00
TOTAL								14,765,000.00

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.

OTHER TERMS : 1. Payment Terms : Payable immediately Due net 2. Incoterms : FOR Delivery FACTORY DELIVERY 3. Mode Of Dispatch : 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 : SSHARMA , 08.01.2018 PO Released DH : RKGUPTA , 20.01.2018 , PO Released PH : RKGUPTA , 20.01.2018	REMARKS For, Gujarat Ambuja Exports Ltd. Authorised Signatory
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8. Accordingly, the Operational Creditor supplied 2022.170 Metric Tons (MT) of Steam Coal totalling amount of Rs.1,49,28,670.15ps. in tranches to the Corporate Debtor and raised various Tax invoices which dates w.e.f. 10.01.2018 to 24.02.2018 which is annexed with the Petition as **Annexure-D at page-23 to 99.**
9. Operational Creditor raised various invoice for the period between 10.01.2018 to 24.02.2018 which were duly acknowledged by the Corporate Debtor. Corporate Debtor paid an amount of Rs.1,34,97,327.50 ps. in tranches till 18.04.2018 against invoice amount of Rs.1,49,28,670.15ps. as per Purchase Order No.4500181423 dated 08.01.2018 and did not pay balance amount of Rs.14,31,342/-. However, in spite of repeatedly request to the Corporate Debtor for recovery of balance 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-100 to 108 & Annexure-F at page-109 to 112.**

10. Corporate Debtor has confirmed the amount of Rs. 56,09,724/- as on 30.06.018 as outstanding amount against the goods supplied by the Operational Creditor vide Letter dated 19.07.2018. But thereafter not made the payment as promised. Corporate Debtor has also assured regarding outstanding amount through mail dated 21.06.2018. Copy of email communication for recovery of outstanding dues are annexed with the Petition as **Annexure-G Colly at page-113 to 118.**
11. Corporate Debtor has never raised any dispute or objection qua the goods supplied by Operational Creditor and even after utilization of goods and till issue of Demand Notice under Section 8 of IBC.
12. A Demand Notice Form-3 came to be issued on 31.07.2019 to the Corporate Debtor which along-with postal receipt dated 21.08.2019 as well as Tracking report of delivery are annexed with the Petition as **Annexure-H & I & J at page-119 to 132.** 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-133 to 142.**

13. The Operational Creditor relies upon the following documents.

- a. The Purchase order dated 08.01.2018*
- 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. Copy of Email and letter dated 19.07.2018, 20.06.2018 and email dated 20.07.2018*
- f. Copy of email communication for recovery of outstanding dues.*
- g. Copy of Form 3 Demand Notice dated 31.07.2019.*
- h. Copy of postal receipt and postal acknowledgement.*
- i. Copy of reply dated 14.09.2019 issued by the Corporate Debtor against Operational demand notice.*
- j. Copy of board resolution in favour of authorised signatory for filling of this Petition.*

14. That on issuance of the notice, the Corporate Debtor has appeared and filed its reply affirmed by one Mr. Sanjay

Maniar, on 18.12.2020 vide inward diary No. 10526, denying various averments made in the Application. In reply Corporate Debtor has placed following defense:

- (i) Pre-existing dispute
- (ii) Low Quality Coal
- (iii) Manipulation of Accounts
- (iv) Mismatch of Amount
- (v) Demand Notice not in proper format
- (vi) No bank statement

15. It is stated by the Corporate Debtor that Operational Creditor has raised amount of Rs.19,21,038/- in Demand Notice. However, with malafide intention not considered the debit notes of Rs.12,63,031/- issued by the Corporate Debtor against the lower/poor quality of goods supplied by the Operational Creditor and suppressed the above fact before this Tribunal. It is further stated that the amount claimed as default in the principle amount in the petition to Rs.14,31,342/-. However, no clarification was given by the Operational Creditor regarding the change/mismatch of amount.

16. 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.17,60,550/- as allegedly defaulted amount.
17. 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.

18. 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.
19. 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 then 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.

20. It is stated that, Purchase order No. 4500181423/001 dated 08.01.2018 contains relevant terms in P.O. are as follows:-

Note- 1. GCV less than 5000 K. Cal/Kg. will be deducted Proportionately.

21. It is stated that, after receipt of low quality material, Corporate Debtor has sent email dated 22.02.2018 stating low quality of coal Gross Calorific Value along with Lab Test report. The lower quality of coal shall increase the consumption of the coal and it will lead to higher cost to purchaser which are annexed with the reply as **Annexure-H** at **page 73 and 74.**

22. The email dated 22.02.2018 was shown to the Hon'ble Tribunal along with source code which is recorded in order dated 22.11.2023. Affidavit for the same was also filed on 02.12.2023.

23. Further, to prove the pre-existing dispute between the parties, on 28.05.2019 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”*.
24. It is stated that as per the books maintained by Corporate Debtor, Operational Creditor has supplied coal worth Rs. 1,47,60,356/- between a period of 10.01.2018 to 24.02.2018 and against this, Corporate Debtor has made payment of Rs.1,34,97,327/- and debited amount of Rs.12,63,031/-. However, Operational Creditor has never disputed the debit notices issued by Corporate Debtor time to time which are annexed with reply as **Annexure-E Colly page 49 to 62**.
25. The Corporate Debtor states that there are pre-existing dispute and pointed out that the coal supplied against the

P.O. No. 4500181423 was not upto the standard quality and remained low at various time which was also informed to the Operational Creditor as well as the note with respect to GCV was also mentioned in the PO as “GCV less than 5000 K.Cal/Kg will be deducted proportionately.”

26. The Corporate Debtor 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 email dated 28.05.2019 at annexure- D*
- d) *Copy of such debit notes at Annexure-E*
- e) *Copy of working computing sheet for relevant period at Annexure –F*
- f) *Copy of ledged account maintained by the Corporate Debtor at Annexure-G*
- g) *Copy of lab reports indicating quality of the supply at Annexure-H*
- h) *Copy of purchase order is attached at Annexure –I*
- i) *Copy of letters of payment issued to the applicant is attached at Annexure-J*
- j) *Copy of balance confirmation letter and response thereof is attached at Annexure-K (Colly.)*

k) Copy of table depicting the manipulation for reference at Annexure-L

27. In response to the reply of the Corporate Debtor in rebuttal no Rejoinder was filed by the Operational Creditor despite opportunities given to it.
28. However, 11.10.2023 during the course of hearing Ld. Counsel for the Corporate Debtor again reiterated that as per the purchase order dated 08.01.2018, one of the terms and conditions was of quality parameters and deductions towards inferior quality of the product. On receiving the goods, coal quality was attested in the lab, which was found in the lesser of GCV value for which the debit note of Rs. 12,63,031/- against various invoices was raised from 10.01.2018 to 24.02.2018. The Operational Creditor was informed through an e-mail dated 22.02.2018, from the e-mail of sksharma@ambujagroup.Com. The copy of the proof is annexed with the reply at page no. 73 and report at page no. 74, to which the Learned Counsel for the Operational Creditor denied to receive any such report from the Corporate Debtor. Further, in the reply para No. 3.5 to the

statutory notice, this fact was also categorically averred which is reproduced hereunder:-

“ 3.5 My client states that as per books of accounts of my client towards the demand notice for invoices from 10.01.2018 - 24.02.2018, you supplied coal of an amount Rs. 1,47,60,356.4/- and my client paid you amount of Rs. 1,34,97.327/- and debited total amount.of Rs. 12,63,031/- because of difference in GCV supplied by you against the purchase order and no amount remains payable. It is submitted that the said supplies pertains to my client Purchase Order No.4500181423 dated. 08.01.2018 for supply of 2000 MT of Indian Coal on FOR basis to my client Unit at Sitargani, Uttrakhand with terms and conditions containing therein regarding quality parameters and deductions towards inferior quality.”

This para refers to the debit note of Rs.12,63,031/- which was claimed to be raised and delivered to the Operational Creditor. Hence, the Corporate Debtor was directed to demonstrate on the next date of hearing about the delivery proof of the same. Learned Counsel for the applicant is also directed to file an additional affidavit giving details of the outstanding invoice, as claimed in the application. It is to be filed within ten days from the date of this order.

29. On 22.11.2023, in compliance of the order dated 11.10.2023, the Corporate Debtor brought the laptop before the Bench to demonstrate the proof of e-mail dated

22.02.2018 delivered to the Operational Creditor on their E-mail IDs through sksharma@ambujagroup.com. Hard copy of the same is already placed with the reply at page nos. 73 and 74. We compared the hard copy of page nos. 73 and 74 with the e-mail shown in the laptop which are the same to which the counsel for the Operational Creditor on the previous date of hearing denied to have received any such email/report from the Corporate Debtor side. the Operational Creditor undertake to place on record the affidavit along with source code of the server to demonstrate the e-mail was actually delivered on the recipient (Operational Creditor herein) E-mail ID.

30. However, in compliance of the order dated 22.11.2023 and direction given vide order dated 11.10.2023 to prove the delivery of e-mail dated 22.02.2018 which is denied by the Operational Creditor, Corporate Debtor has filed affidavit on 04.12.2023 vide inward diary No. 4848 along with source code of the server to demonstrate the e-mail was actually delivered on the recipient i.e. Operational Creditor.

31. In compliance of the order dated 11.10.2023, Operational Creditor has filed affidavit dated 18.11.2023 vide inward diary No. 5167 annexing the list of bills/invoices which are outstanding and they are in total number of 7 showing total balance amount of Rs.14,31,342.30/- pending against the Purchase Order No. 4500181423 dated 08.01.2018 which is as under:-

PO. No. - 4500181423 Dt. 08-01-2018				
Sr. No.	Bill No.	Bill Date	Particulars	Outstanding Amount
1	754	19/02/2018	Patial Outstanding	174619.32
2	755	19/02/2018	Outstanding Bill	215421.35
3	758	19/02/2018	Outstanding Bill	212911.30
4	759	20/02/2018	Outstanding Bill	215716.65
5	761	21/02/2018	Outstanding Bill	213501.90
6	773	23/02/2018	Outstanding Bill	186334.30
7	775	24/02/2018	Outstanding Bill	212837.48
Total				1431342.3

32. In response to the affidavit dated 18.11.2023, Corporate Debtor has filed counter affidavit on 02.02.2024 vide inward

diary No. 923 and stated that bill amount of the Operational Creditor is incorrect in view of the fact that goods were sold on FOR basis and hence, goods received at Corporate Debtor will be considered for accounting and not the goods billed.

33. The Corporate Debtor has also filed affidavit on 02.02.2024 vide Inward Diary No. 923, in terms of order dated 10.01.2024 with advance copy to the opposite counsel. Wherein stated that it is Corporate Debtor's practice to make payment for entire bills after deduction for less receipt of goods, quality deduction and GST hold (which is released once they are credited in GST account of the company). In accordance with the above practice, any partial payment against particular invoice is not possible and Operational Creditor herein has taken a particular figure by adjusting the payments made by Corporate Debtors on FIFO method to arrive at figures mentioned in the affidavit dated 14.12.2023 which is incorrect.

34. The Operational Creditor also filed the affidavit dated 15.04.2024 against the affidavit dated 01.11.2023 of the Corporate Debtor and again denied the factum of e-mail dated 22.02.2018 qua Lab Test report on technical grounds. However, on perusal of the affidavit, it is seen that in para. 7, the Operational Creditor has stated to have annexed screen shots of emails. But no annexure or any screen shots of the e-mail is annexed, which was confirmed by the Counsel for the Operational Creditor in court during the course of hearing on 24.04.2024.
35. 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.
36. 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 the Operational Creditor had supplied 2022.170 Metric

Tons (MT) of Steam Coal to the Corporate Debtor in terms of Purchase Order No.4500181423 dated 08.01.2018 issued by the Corporate Debtor for supply of 2000 Metric Tons (MT) of steam coal totalling amount of Rs.1,47,60,000/-.

b. The Operational Creditor had raised various invoices w.e.f. 10.01.2018 to 24.02.2018 aggregating to an amount of amount of Rs.1,49,28,670.15ps. against supplied 2022.170 Metric Tons (MT) of Steam Coal.

c. The goods sold or supplied by the Operational Creditor to the Corporate Debtor were duly received.

d. The Corporate Debtor paid total an amount of Rs.1,34,49,732750ps. in tranches till 18.04.2018 against totalling amount of Rs.1,49,28,670.15ps. against Purchase Order No.4500181423 dated 08.01.2018 and did not pay balance amount of Rs.14,31,342/-.

e. A Demand Notice was issued on 31.07.2019 by the Operational Creditor to the Corporate Debtor which was replied by the Corporate Debtor vide reply dated 04.09.2019 in which one of the dispute of law quality of coal was raised in terms of **Note- 1. GCV less than 5000 K. Cal/Kg. will be deducted proportionately** as contains in Purchase order No. 4500181423/001 dated 08.01.2018.

f. Further, the Corporate Debtor categorically averred in para 3.5 of reply to demand notice which is reproduced hereunder:-

“ 3.5 My client states that as per books of accounts of my client towards the demand notice for invoices from 10.01.2018 - 24.02.2018, you supplied coal of an amount Rs. 1,47,60,356.4/- and my client paid you amount of Rs. 1,34,97.327/- and debited total amount.of Rs. 12,63,031/- because of difference in GCV supplied by you against the purchase order and no amount remains payable. It is submitted that the said supplies pertains to my client Purchase Order No.4500181423 dated. 08.01.2018 for supply of 2000 MT of Indian Coal on FOR basis to my client Unit at Sitargani, Uttrakhand with terms and conditions containing therein regarding quality parameters and deductions towards inferior quality.”

g. It is established and proved that the Operational Creditor was required to supply the coal to the quality of 5000 GCV as per the purchase order the coal which was supplied against the various invoices was found below 5000 GCV by the Corporate Debtor. In the lab Test Report which was specifically conveyed to the Operational Creditor and on receipt of the demand notice raised by the Operational Creditor dated 31.07.2019, Corporate Debtor categorically raised this issue with the Operational Creditor in its reply dated 04.09.2019 annexed at **Annexure-B**.

h. The Corporate Debtor has also sent email dated 22.02.2018 stating low quality of coal Gross Calorific Value along with Lab Test report for which the debit Note of Rs.12,63,031/- against various invoices was raised from 10.01.2018 to 24.02.2018. However, Operational Creditor denied to have received such e-mail or Debit Note.

i. However, Corporate Debtor on 22.11.2023 demonstrated the proof of e-mail dated 22.02.2018

delivered to the Operational Creditor on their E-mail IDs qua the supplied coal of low quality as well as the quality Lab Test Report. Hard copy of the same is already placed with the reply as **Annexure-H** at page nos. 73 and 74. The plea of the Operational Creditor, qua Lab Test Report on Excel Sheet produced at page 74 of the reply by Corporate Debtor, is not acceptable.

j. The Corporate Debtor has also raised debit Note for amounting to Rs. 12,63,031/- on 31.01.2018 to 16.03.2018 for the inferior quality of coal supplied to the Corporate Debtor which are annexed with reply as **Annexure-E Colly page 49 to 62**. However, no proof of dispatch or delivery has been annexed with the reply or in subsequent affidavits.

a. Hence, there is pre-existing dispute in terms of Section 8(2)(a) of the IB Code between the parties qua the quality of the Coal supplied by the Operation Creditor in respect of Purchase order No. 4500181423 dated 08.01.2018 in terms of **Note- 1**. GCV less than

5000 K. Cal/Kg. will be deducted proportionately as contains.

37. 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.”

38. 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

39. Accordingly, this application **C.P. (IB)147(AHM)2020** is dismissed. No order as to costs.

-Sd-
SAMEER KAKAR
MEMBER (TECHNICAL)

-Sd-
SHAMMI KHAN
MEMBER (JUDICIAL)

MD, SP