

**IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH, COURT-I**

CP (IB) 872/MB/2023

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

Vinayak Trading Corporation

...Operational Creditor/Applicant

Versus

B S Ispat Limited

[CIN:U27100MH1999PLC122856]

...Corporate Debtor/Respondent

Order Pronounced on 02.04.2024

Coram:

Hon'ble Member (Judicial) : Justice V. G. Bisht (Retd.)

Hon'ble Member (Technical) : Mr. Prabhat Kumar

Appearances:

For the Operational Creditor : Mr. Gaurav Joshi, Senior Advocate.

For the Corporate Debtor : Mr. Rahul Narichania, Advocate.

ORDER

Per: Justice V. G. Bisht (Retd.), Member (Judicial)

Brief Facts

1. This Company Petition is filed under section 9 of the Insolvency and Bankruptcy Code, 2016 (**IBC**) by **Vinayak Trading Corporation ("hereinafter referred to as the Operational Creditor / Applicant")**, seeking to initiate Corporate Insolvency Resolution Process (CIRP) against **B S Ispat Limited ("hereafter referred to as the Corporate Debtor/Respondent")**.
2. The Applicant is in the business of wholesale and retail supply of TMT Bar, Cement, Sand Metal, Coal & Building Material etc., with its address of correspondence being at Shop no. 1, KH No. 238, NH 69, Saoner Road, Manegaon, Nagpur - 441107
3. The Respondent was incorporated on 01.12.1999 under the Companies Act, 1956. Its Corporate Identity Number (CIN) is U27100MH1999PLC122856 and registered office is at Khasara No. 97, 101, 190, Village Salori Yesna Post Chinora, Tal. Warora Chandrapur, Maharashtra - 442914. Therefore, this Bench has jurisdiction to entertain and decide the Petition. The Respondent is engaged in the business of manufacturing of steel, sponge, irons, coal, power generation, etc. The Authorized share capital of the Respondent is Rs. 1,85,00,00,000/- whereas the paid up share capital is Rs. 182,45,63,920/-.

Submissions of the Applicant:

4. In 2015, the Ministry of Coal vide Vesting Order No. 104/6/2015/NA transferred the Marki-Mangli III coal mine to B S Ispat Ltd. for its captive use in Sponge Iron Plant and Power

Plant located in Warora.

5. In March 2021, the Parliament amended the legislations relating to mining and sale of coal thereby allowing captive mines to sell up to 50% of their annual mineral production on the open market after meeting the requirement of the end use of the plant(s) lined with the mine.
6. The Operational Creditor has advanced total amount to the tune of Rs. 83,93,76,504.80- (Rupees Eighty Three Crores Ninety Three Lakhs Seventy Six Thousand Five Hundred and Four and Eighty Paise only) against which the coal was required to be supplied on ad-hoc basis, by the Corporate Debtor. It is submitted that the Corporate Debtor has supplied coal to the Operational Creditor from 28 May 2021, in lieu of the advance amounts as remitted by the Operational Creditor to the Corporate Debtor in various tranches.
7. However, as against the advance payment of Rs. 40,46,76,504.80/- (Rupees Forty Crores Forty Six Lakhs Seventy Six Thousand Five Hundred and Four and Eighty Paise only) made by the Operational Creditor till 15th September 2022, the Corporate Debtor had only supplied coal worth Rs. 17,20,89,465.33/- (Rupees Seventeen Crores Twenty Lakhs Eighty Nine Thousand Four Hundred and Sixty Five and Thirty Three Paise only) to the Operational Creditor prior to the issuance of the delivery order.
8. The Corporate Debtor had informed the Operational Creditor that they have entered into Coal Mine Development and Production Agreement ("CMDPA") dated 17 August 2022 with the Nominated Authority i.e., the Office of Ministry of Coal (Government of India) by virtue of which, the Nominated Authority has issued Vesting Orders/Allocation of two

commercial mines viz., Chinora and Majra situated at Chandrapur district in Maharashtra in favor of the Corporate Debtor. As the advances paid by the Operational Creditor were much more than the quantity of coal as supplied by the Corporate Debtor, it was assured to the Operational Creditor that pursuant to execution of CMDPA, they shall supply coal against the advances as remitted by the Operational Creditor.

9. Pursuant thereto, the Corporate Debtor issued a Delivery Order bearing no. BSIL/MINE/DO/2022-23/006 dated 15.09.2022 ("Delivery Order/DO"), whereby, the Corporate Debtor agreed to supply coal to the Operational Creditor from 3 coal mines, viz., Marki Mangli III (i.e., captive coal mine), Majra and Chinora (Commercial coal mines). Moreover, the Delivery Order further provided that in the event the Corporate Debtor fails to supply the coal, it will return the amount paid to it by the Operational Creditor.
10. The Operational Creditor had advanced an amount to the tune of Rs. 83,93,76,504.80/- (Rupees Eighty-Three Crores Ninety-Three Lakhs Seventy-Six Thousand Five Hundred and Four and Eighty Paise only) to the Corporate Debtor from 28.05.2021 to 19.04.2023.
11. In spite of the total advances to the tune of Rs. 83,93,76,504.80/- as received by the Corporate Debtor, the coal worth Rs. 17,20,89,465.33/- has been supplied against the advances as remitted till 15.09.2022, and since the issuance of the Delivery Order, the Corporate Debtor has supplied coal worth Rs. 11,17,39,321.46/- to the Operational Creditor. It is submitted that the Corporate Debtor miserably failed to comply with its obligations towards supply of coal to the Operational Creditor, given the slow pace at which the coal is being supplied to the

Operational Creditor, in lieu of the huge outstanding amounts in the books of the Corporate Debtor, and especially considering the fact that the Corporate Debtor has unilaterally ceased to supply coal to the Operational Creditor from March 2023.

12. Even as per the history of supply and the quantity of the coal as supplied by the Corporate Debtor, it can be inferred that the Corporate Debtor would not be able to fulfil its obligations qua the Operational Creditor, from the remaining coal mine i.e., Marki Mangli III as the cumulative production capacity of this mine is 0.21 MT per annum. However, the commercial sale of coal from Marki Mangli-III also has a restrictive limit as it is a captive mine. As per the provisions of the Mines and Minerals (Development Regulation) Act 1971 and the Mineral Concession Rules, 1960 the lessee of a captive mine can sell up to 50 percent of the total coal produced in a financial year, only after meeting the requirement of the end use of the plant linked with the mine. Moreover, as per the Minutes of the Meeting chaired by Additional Secretary and Nominated Authority on 21 October 2022 for review of coal production it was observed that as of September 2022, Marki Mangli-III was only able to produce 58.32% of the target production.
13. Even after the abrupt stop in the supplying of coal by the Corporate Debtor after 09.03.2023, the Operational Creditor maintained constant communication with the Corporate Debtor up to 19.04.2023 both telephonically and through other means. Throughout this period the Corporate Debtor repeatedly assured the Operational Creditor that it would resume an uninterrupted supply of coal without any further delay.
14. Despite the assurances made by the Corporate Debtor to the Operational Creditor regarding the uninterrupted supply of coal,

it failed to fulfill its commitment and did not supply any coal to the Operational Creditor. However, during the same period the Corporate Debtor continued supplying coal to other parties.

15. Even though the Delivery Order stipulated a two-year timeline for the Corporate Debtor to fulfill its obligation of supplying the requisite quantity of coal, the supply of coal to the Operational Creditor should have been conducted in a regular and linear manner.
16. Subsequently, upon the Corporate Debtor's failure to supply the coal, inspite of remitting advance monies by the Operational Creditor; the Operational Creditor was constrained to raise its concerns vide email dated 11.05.2023, wherein, it highlighted the matter of non- supply of coal on part of the Corporate Debtor and requested the Corporate Debtor to return the outstanding advance amount of Rs. 55,55,61,687/- (Rupees Fifty-Five Crore Fifty-Five Lakh and Sixty-One Thousand Six Hundred and Eighty-Seven only) within 7 days.
17. However, there was no response to the said email within the stipulated time period as provided in the said email and only after a span of 24 days, the Corporate Debtor vide its email dated 06 June 2023, concocted a false story of having a verbal conversation with a representative of the Operational Creditor and casually stating that it is simply waiting for the Operational Creditor to lift the coal from its site, while simply glossing over the fact that the Operational Creditors is required to arrange for the transportation for lifting the coal subject to the quantity of the coal being supplied, which is to be provided by the Corporate Debtor. In its reply dated 06.06.2023 the Corporate Debtor did not contest the remittance made to it by the Operational Creditor
18. The Operational Creditor vide its e-mail reply dated 07.06.2023,

in the interest of maintaining its business relationship with the Corporate Debtor, requested the supplier to provide the schedule (as agreeable to both the Parties) for the supply of coal in order to enable the Operational Creditor to arrange transportation for the lifting of coal. The Operational Creditor vide the same email also stipulated modified payment conditions based on the outstanding balance in light of the non-supply of coal on part of the Corporate Debtor.

19. Upon demand of monies by the Operational Creditor, the Corporate Debtor as an afterthought, vide email dated 07.06.2023, issued a debit note dated 07.06.2023 for an amount of Rs 3,74,45,713.28/- against the rate difference of coal sale from Marki Mine III for the period 01.09.2023 to 31.03.2023 (sic : 31.03.2024), which was replied to by the Operational Creditor vide email dated 08.06.2023 stating that without any prior communication with the Operational Creditor, the said Debit Note has been issued. It was also informed that the books of account were being reconciled from time to time, and duly acknowledged by the Corporate Debtor, and thus, the said debit note was requested to be withdrawn, being issued with a malafide intention.
20. The Corporate Debtor vide its email dated 10.06.2023 denied all its liability towards the Operational Creditor and again refused to provide a supply schedule to enable the Operational Creditor to lift the coal. Instead, it demanded that the Operational Creditor retract its position as communicated in its email dated 07.06.2023 and also provide a lifting schedule to the Corporate Debtor to enable it to supply coal.
21. The Nominated Authority of the Ministry of Coal vide its order dated 02.11.2022 had terminated the Coal Mine Development

and Production Agreement ("CMPDA") as executed with the Corporate Debtor for the Majra Coal Mine as well as the Chinora Coal Mine (commercial mines). This termination occurred due to the Corporate Debtor's failure to fulfill its obligations and meet the specified conditions, which included its inability to provide the required Performance Security from its banker to the Nominated Authority. Ideally, the Corporate Debtor should have promptly communicated this termination and its reasons to the Operational Creditor, in order to ensure transparency and facilitate mutual understanding between the parties.

22. The Corporate Debtor had secured the advanced amount from the Operational Creditor on the assurance that it would supply the requisite quantity of coal from the MAJRA and CHINORA Mines. The termination of the Corporate Debtor's CMPDA for both the Majra Coal Mine and the Chinora Coal Mine stands as compelling evidence of its failure to meet the obligations specified in the Delivery Order.
23. Moreover, in respect of the third mine mentioned in the Delivery Order, i.e. Marki Mangli III, (captive coal mines) the Deputy Directorate General of Mines Safety, has identified several safety contraventions in terms of operation of the mine on part of the Corporate Debtor. As a consequence of the same the said mine is also currently non-operative. The Corporate Debtor has failed to comply with the order of the Dy. DGMS, which renders even this particular coal mine ineffective in supplying the coal to the Operational Creditor.
24. The Corporate Debtor without informing the Operational Creditor regarding the said termination of the CMDPA and fully being aware of its inability to supply coal and fulfil their obligations towards the Operational Creditor, has failed to return

the monies as remitted and has been non-responsive regarding the schedule of supply of coal, which has ultimately led to occurrence of the default on part of the Corporate Debtor.

25. Consequently, on account of the termination of the CMPDA of the Corporate Debtor for the Majra and Chinora mines and inoperative coal mines of Marki Mangli III, it is amply evident that the Corporate Debtor, being incapable of performing its obligations towards the Delivery Order has defaulted, and even failed to return the monies as advanced by the Operational Creditor.
26. Upon failure of the Corporate Debtor to refund the monies or to fulfil its obligations of delivery of goods, the Operational Creditor was constrained to issue a Form 3 Demand Notice dated 21.06.2023 as contemplated under the Code.
27. In response to the Form 3 Demand Notice as addressed by the Operational Creditor, the Corporate Debtor vide its email dated 30.06.2023, has responded to the notice in a mechanical and generic manner without addressing the core issues. The Corporate Debtor has malafidely stated in the reply that they are willing to perform their contractual obligations while simply glossing over the correct factual matrix that the mines are not in operation and the CMPDA for the two commercial mines at Majra and Chinora have been terminated. Moreover, the Corporate Debtor has falsely stated that Marki Mangli Mine III is a running mine which has sufficient deposits, when infact, the Order u/s 22(3) of the Mines Act, 1952 has been passed by the Chief Inspector of Mines (Directorate of General Mines Safety) against the Marki Mangli III Opencast Mine, which has been pasted at the conspicuous places in the mine. The said Order clearly records than there have been serious contraventions of the

Coal Mines Regulations, 2017 by the Corporate Debtor, and in lieu of the same, prohibition of the employment of persons have been imposed by the Chief Inspector of Mines, which makes it abundantly clear that the Corporate Debtor, in order to avoid the initiation of corporate insolvency resolution process, has made false assurances of their willingness to perform their obligations qua the Operational Creditor. Also, the Applicant has placed on record information received by filing RTI application upon perusal of which it is clear that the Respondent does not have sufficient amount of coal to comply with the DO. Moreover, the Corporate Debtor has failed to obtain the necessary sanctions and permissions as required under the Applicable laws.

28. The Applicant has submitted that as per the show-cause notice dated 23.06.2023 issued by the District Collector, Yavatmal, upon inspections being conducted, at the pithead, few thousands of quantity of coal was mixed with crushed stones, and it was visible that the quality of coal was compromised.
29. Amount claimed to be in default is Rs. 55,55,61,687/- (Rupees Fifty-Five Crore Fifty-Five Lakh and Sixty-One Thousand Six Hundred and Eighty-Seven only). The date of default is stated to be 19 May 2023.
30. Conclusively, the Corporate Debtor has failed to remit the monies to the Operational Creditor and thus, the instant petition u/s 9 of the Code is being filed.

Contentions of the Respondent

The Respondent has contented the present Application on the following grounds:

31. **Proprietary concern not eligible to be an Operational Creditor:**
The Respondent has contented that as per the definition of

'operational creditor' under S. 5(20) of IBC, 2016, operational creditor is mandatorily required to be a 'person', whereas in the present case, the Operational Creditor is a proprietary concern and is hence ineligible to file the present application. Further, the demand notice dated 21.06.2023 has been issued by Mr. Kishor Agrawal in the capacity of sole proprietor of the Applicant, whereas the present petition has been signed and affirmed by Mr. Kishor Agrawal through Kishor Himmatlal Agrawal HUF (Sole Proprietor). However, an HUF can only sue through the Karta. Also, no authorization letter has been submitted by the Applicant along with the petition.

32. Delivery Order dated 15.09.2022 is unstamped hence not admissible. Further, as per Rule 6(2) of the IBC Rules, 2016, it is mandatory for the Applicant to serve a copy of the application to the registered office of the Corporate Debtor and to the Board. The present petition was filed on 21.08.2023 whereas the Applicant has served the copy of the petition to the Respondent vide email dated 24.08.2023, i.e. after filing the present petition on 21.09.2023.
33. **Non-existence of 'operational debt' / Applicant does not qualify to be an 'operational creditor':** It is submitted by the Respondent that the transaction entered between the Applicant and respondent is in the nature wherein the claim of the Applicant is in respect of provision of goods or services. Moreover, the advance payment made by the Applicant is neither a claim in respect of any goods nor in respect of any services to the Respondent.
34. **Non-existence of 'default' under S. 3 (12) of IBC to initiate insolvency proceedings:** The Respondent submitted that it is obliged to return the advance amount paid to the Applicant in the event the Respondent is unable to supply the coal only upon expiry of the validity period of 2 years of the Delivery Order, i.e., after

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- 14.09.2024. Hence any amount due becomes payable after 14.09.2024. Accordingly, there is non-existence of any default.
35. **Demand notice is non-complaint with Form 3 of IBC Rules, 2016:** The Respondent has submitted that the Applicant has failed to attach a certificate from an information utility confirming that no record of a dispute raised in relation to the relevant operational debt has been filed by any person at any information utility.
36. The Respondent has further contended the present application on the grounds that the present application is premature, and has been filed to create pressure on the Respondent, the Respondent has suppressed material facts from this Tribunal.
37. Also, the Respondent is a going concern and no other insolvency or winding up proceedings of any kind have been filed by any creditor against the Respondent. Moreover, the Respondent has not supplied any goods or services to the Respondent.
38. Further, as per the Delivery order the Respondent was required to pay an advance of Rs.100 Crores to the Respondent in order to freeze the price and quantity of the coal, and the said amount was to be repaid only if the respondent failed to supply the coal. The Applicant has paid only Rs. 44.37 Crores of the advance amount and hence it is the Applicant who is in breach of contract. The Respondent has never expressed its inability to supply coal to the Applicant.
39. From the ledger filed by the Applicant, delivery of 24617 MT of coal from the pithead of the mine which was made to the Applicant has been deleted. Also, the delivery order was valid till 14.09.2024 and when reply to the present application was filed, the delivery order was valid and both the parties were bound by the same. The Respondent has time and again stated that it is ready and willing to deliver the balance quantity of coal to the Applicant until the

date of expiry of the delivery order.

40. It is further submitted that the amount claimed in the Application does not match with the amount claimed in the emails of the Applicant. Also, only an amount of Rs. 44,37,00,000/- has been advanced to the Respondent. It is the Applicant who is not sending the required transport for collecting coal from the mine.
41. The Respondent has not informed the applicant that by virtue of CMDPA dated 17.08.2022, the Nominated authority has issued Vesting order/Allocation of 2 commercial mines viz. Chinora & Majra. It was never assured by the Respondent that supply of coal would be dependent upon the execution of CMDPA. It can be observed that it was agreed vide the Delivery Order that the coal would be supplied from either of the 3 mines, as the case may be. The Respondent is ready to supply coal worth Rs. 51,84,20,121/- lying to the credit of the Applicant in the Respondent's Books of Accounts.
42. The Applicant has suppressed material facts which have specifically been informed to the Applicant by the Respondent's reply letter dated 30.06.2023 stating "*the said termination letter dated 02.11.2022 in respect of the Majra Coal Mine has been already quashed and set aside by the judgment of the Hon'ble Bombay High Court dated 10.02.2023 in Writ Petition No. 7060 of 2022. Whereas, the termination letter dated 02.11.2022 in respect of Chinora Coal Mine is pending before the Hon'ble Bombay High Court as writ petition 7061 of 2022 and we are hopeful of a positive outcome.*"
43. Following are verbatim submissions of the Respondent vide its Written submission:

<i>Alleged Claim amount in Company Petition</i>	<i>Rs. 55.55 Crores</i>
<i>Admitted Amount paid under</i>	<i>Rs. 44.37 Crores</i>

THE NATIONAL COMPANY LAW TRIBUNAL

MUMBAI BENCH - I

C.P. (IB) No. 872/MB/2023

<i>D.O. dated 15.09.2022 (paras 6 & 10 of C.P.)</i>	<i>(hence quantum of claim amount of Rs. 55.55 crores is beyond scope of D.O. dated 15.9.2022 and the Insolvency Petition is filed on the basis of the D.O. dated 15.9.2022)</i>
<i>Admitted value of Coal already supplied under D.O. dated 15.9.2022 (Paragraph 10 of C.P.)</i>	<i>Rs. 11.17 crores (Paragraph 10 of C.P.)</i>
<i>Debit Note dated 31.3.2023 issued by Respondent against D.O. dated 15.9.2022, but wrongly not accepted by Applicant (Page 116 of C.P.)</i>	<i>Rs. 3.74 crores</i>
<i>Balance amount for which coal has to be supplied under D.O. dated 15.9.2022.</i>	<i>Rs. 29.46 crores (taking into account the Debit Note of Rs. 3.74 crores = 33.3 - 3.74)</i>
<i>Balance quantity of coal to be supplied against Rs. 29.46 crores (33.20 crores - 3.74 crores Debit Note)</i>	<i>48612 metric tonnes at agreed net rate of Rs. 6060.17 per tonne as per D.O. dated 15.9.2022 (i.e. Rs. 5333.50 + GST, Cess and TCS) (29.46 crores / 6060.17 per metric tonne)</i>
<i>Coal already lying ready for delivery as on 06.02.2024</i>	<i>30000 tonnes (worth about Rs. 18.18 crores at net rate of Rs. 6060.17 per tonne agreed in D.O.)</i>
<i>Thus, balance coal to be delivered</i>	<i>18612 tonnes Respondent is fully capable, ready and willing to deliver 18612 tonnes of coal well within period of D.O., i.e. 14.9.2024</i>
<i>Applicant claims disputed amount as being Rs. 55.55 crores (which is beyond the scope of D.O.)</i>	<i>Strictly without prejudice to the foremost contention of the Respondent that the alleged claim amount of Rs. 55.55 crores is outside the scope of the Delivery Order dated 15.9.2022, only to satisfy the conscience of this Hon'ble Tribunal, the Respondent submits that, though not</i>

	<p><i>contractually bound and liable to supply coal in excess of Rs. 29.46 crores under the D.O. dated 15.9.2022 (coal worth Rs. 11.17 crores + 3.74 Crores Debit Note already having been supplied under the D.O. dated 15.9.2022), the Respondent has the capacity and capability to supply coal worth Rs. 51.84 crores i.e., 85,547.87 MT of coal (out of which 30000 MT is already lying ready), at the agreed net rate of Rs. 6060.17 per metric tonne under the Delivery Order dated 15.9.2022 (taking into account the Debit Note of Rs. 3.74 crores)</i></p>
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44. The Respondent has relied on *Mobilox innovations Pvt. Ltd. v. Kirusa Software Pvt. Ltd. (2018) 1 SCC 353* to support its contentions.

45. The Respondent has further submitted that it has the capacity to supply coal worth Rs. 51.81 crores, i.e. 85,547.87 MT of coal, at the agreed net rate of Rs. 6060.17 per metric tone under the DO dated 15.09.2022 (Rs. 55.55 crores – Rs. 3.74 crores Debit Note = 51.81 crores/ Rs. 6060.17 per tonne = 85547 metric tonnes)

46. Vide its additional affidavit, the Respondent has submitted that the Applicant has failed to comply with Rule 2B of Insolvency & Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 which states that “2B. Record or evidence of transaction, debt and default by operational creditor:

The operational creditor shall, along with application under section 9, furnish copies of relevant extracts of Form GSTR-1 and Form GSTR-3B filed under the provisions of the relevant laws relating to Goods and Services Tax and the copy of e-way bill wherever applicable:

Provided that provisions of this regulation shall not apply to those

operational creditors who do not require registration and to those goods and services which are not covered under any law relating to Goods and Services Tax.

Findings

1. Heard the submissions of the learned Counsel for the Applicant and Respondent and perused the records.
2. As far as eligibility of the Applicant for filing the present application is concerned, S. 3(23)(g) of the IBC, 2016 states that a person includes any other entity established under a statute and includes a person resident outside India. The Applicant has relied on the decision given in the case of *Neeta Saha v. Mr. Ram Niwas Gupta & Anr (CA (AT)(Ins) no. 321 of 2020*), wherein the Hon'ble NCLAT has held that in the light of S. 2(f) and S.3(23)(g) of the IBC, the term person under the code includes proprietorship firms. Hence the Applicant is eligible to file the present Application.
3. The contention of the Respondent that since the DO dated 15.09.2022 is unstamped, is an inadmissible evidence and cannot be entertained since Hon'ble NCLT, New Delhi has held in the case of *Standard Chartered Bank Singapore v. RCI Industries and Technologies Ltd., IB 2688/ND/2019* that, “*even if the documents in question, i.e., the assignments/agreements have not been stamped under the provisions of the Indian Stamp Act, such non-stamping of the documents shall not render the instant application filed under S.9 of the IBC, 2016 as non-maintainable.*” However, the issue of unstamped or insufficiently stamped document being inadmissible evidence in case of petition under section 7 or 9 is no longer res integra and it has already been settled by the special bench that insufficiency of stamping on the loan document does not vitiate the existence

of obligation. Since the decision of Hon'ble Special bench is prior in time, the same is no longer valid legal proposition.

4. We note that the Applicant was issued a Delivery order dated 15.09.2022 by the Corporate Debtor providing for supply of 3,00,000 metric tonne of coal from its mines within a period of 2 years. Accordingly, the period for supply of the stated amount of quantity of coal expires on 14.09.2024. The Applicant is stated to have total sum of money 83.94 Crores out of which coal worth of Rs. 28.38 Crores has already been supplied. The Applicant claims to have not received the remaining supply of 1, 42,000 metric tonne of coal. It is the case of the applicant that the coal was to be supplied from Marki Mangli III, Majra and Chinora coal mines, however, the nominated authority for ministry of coal terminated the agreement for Majra and Chinora coal mines and only Marki Mangli III mine is in operation, the production capacity of which makes it impossible for the Corporate Debtor to supply it by 14.09.2024.
5. The learned counsel for the Corporate Debtor informs that the Hon'ble High Court has set aside the termination letter issued by the nominated authority for ministry of coal and has also filed on record certified copy of the judgment and order of Hon'ble High Court which is dated 10.02.2023. We have carefully perused the judgment. It supports the submission of the learned counsel. It was further submitted that this application is based on the apprehension of failure and not on the basis of actual default having been committed.
6. The brief note provided by the Applicant states that "*moreover, for FY 2024-25, the DO shall lapse by September 2024, and no mining shall take place during monsoon, which clearly implies that from June 2024 to September 2024, no production/dispatch shall take place*". This

statement also clarifies that the present proceeding has been filed for anticipated default based on the proposition that it is not possible for the Corporate Debtor to fulfil its obligation for supply of remaining coal. We are of the considered view that the liability to refund the advance money received for supply of goods shall arise only on expiry of 2 years from 15.09.2022 and the default shall arise thereafter only. Accordingly, we are of the considered view that this application is premature and deserves to be dismissed on this ground alone.

7. Nonetheless, upon perusal of record of default in the information utility namely National E-Governance Services Ltd. ('NeSL') produced by the Respondent vide Additional Affidavit dated 19.12.2023, we notice the existence of prior dispute between the parties. The relevant screenshot is reproduced hereunder.

Authentication Status				
Party Name	Relationship	UserId	Status	Date and Time of Authentication
BS Ispat Limited	debtor	2701316	DISPUTED	24/08/2023 14:12:48
Reason For Dispute : No such debt existed , Pre-existing Dispute , Remarks - Already DO is in force and active till September 2024 so we deny all the allegations made. In whole we deny .				

8. Considering the above facts and circumstances, since there is dispute between the parties on the subject matter of the present Application, the present Application is **dismissed** under Section 9(5)(ii)(d) of the Code.
9. The Petition bearing **CP (IB) 872/MB/2023** filed by **Vinayak Trading Corporation**, the Operational Creditor, under section 9 of the IBC read with rule 6(1) of the Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016 for initiating Corporate Insolvency Resolution Process (CIRP) against **B S Ispat Limited** [CIN:U27100MH1999PLC122856], the Corporate Debtor, is **dismissed**.
10. The Registry is directed to communicate this Order to the Operational Creditor and the Corporate Debtor by Speed Post

and email immediately, and in any case, not later than two days
from the date of this Order.

11. Ordered accordingly.

Sd/-

Prabhat Kumar
Member (Technical)

<MK>

Sd/-

Justice V. G. Bisht (Retd.)
Member (Judicial)