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**BEFORE THE AJUDICATING AUTHORITY  
(NATIONAL COMPANY LAW TRIBUNAL)  
AHMEDABAD BENCH  
AHMEDABAD**

**C.P. (I.B) No. 150/9/NCLT/AHM/2017**

Coram: **Hon'ble Mr. BIKKI RAVEENDRA BABU, MEMBER JUDICIAL**  
**Hon'ble Ms. MANORAMA KUMARI, MEMBER JUDICIAL**

**ATTENDANCE-CUM-ORDER SHEET OF THE HEARING OF AHMEDABAD  
BENCH OF THE NATIONAL COMPANY LAW TRIBUNAL ON 09.02.2018**

Name of the Company: Kadillac Chemicals Pvt Ltd.  
V/s.  
Shakti Bio Science Ltd.

Section of the Companies Act: Section 9 of the Insolvency and Bankruptcy  
Code

| <u>S.NO.</u> | <u>NAME (CAPITAL LETTERS)</u> | <u>DESIGNATION</u> | <u>REPRESENTATION</u> | <u>SIGNATURE</u> |
|--------------|-------------------------------|--------------------|-----------------------|------------------|
|--------------|-------------------------------|--------------------|-----------------------|------------------|

|    |   |               |             |                        |
|----|---|---------------|-------------|------------------------|
| 1. | NEHA V. PANCHAL<br>FOR, HARMISH K. SHAH | Advocate<br>" | RESPONDENTS | <i>Neha V. Panchal</i> |
|----|---|---------------|-------------|------------------------|

2.

**ORDER**

None present for Operational Creditor/Petitioner. Learned Advocate Ms. Neha Panchal Learned Advocate Mr. Harmish Shah present for Respondent.

Order pronounced in open court. Vide separate sheets.

*Manorama Kumari*  
**MANORAMA KUMARI  
MEMBER JUDICIAL**

*Bikki Raveendra Babu*  
**BIKKI RAVEENDRA BABU  
MEMBER JUDICIAL**

Dated this the 9th day of February, 2018.

**BEFORE ADJUDICATING AUTHORITY (NCLT)  
AMEDABAD BENCH  
AHMEDABAD**

**CP NO. (IB) 150/9/NCLT/AHM/2017**

**In the matter of:**

1. Kadillac Chemicals Private Limited  
3, Shivashray Society  
Vasna Road  
Vadodara 390 015

: Petitioner  
: Operational Creditor

**VERSUS**

1. Shakti Bio Science Limited  
Plot No. 411/1  
LIC Sector, Silvassa Road  
GIDC, Vapi, Gujarat

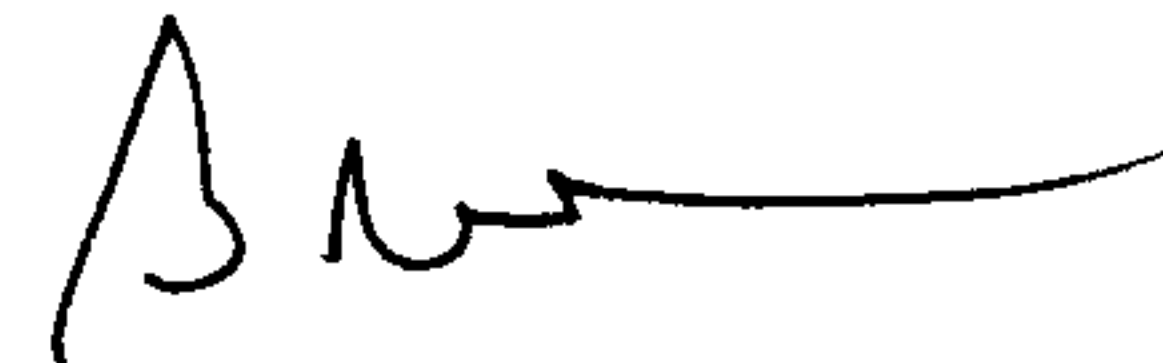
: Respondent No. 1

2. Sujata Sadashiv Shetty  
Whole Time Director  
Shakti Bio Science Limited.  
18/A, Tower-D, Viceroy Park  
Thakur Cinema, Thakur Village  
Kandivali West,  
Mumbai 400 001

: Respondent No. 2

3. Shreya Sadashiv Shetty  
Director  
Shakti Bio Science Limited.  
18/A, Tower-D, Viceroy Park  
Thakur Cinema, Thakur Village  
Kandivali West,  
Mumbai 400 001

: Respondent No. 3



4. Yogesh Chandrasekhar Khedekar  
Director  
Santosh Nagar Chawl No. 3,  
No. 3, B R Nagar,  
Diva Dakiwali Road,  
Thane- 400612 : Respondent No. 4

**Order delivered on 9th February, 2018**

**CORAM: Hon'ble Mr. Bikki Raveendra Babu, Member Judicial  
Hon'ble Ms. Manorama Kumari, Member Judicial**

**Appearance:**

For the petitioner : Mr. Rishikesh Vyas PCS

For the respondent : Mr. Harmish Shah, Advocate

**ORDER**

**(Per : Hon'ble Mr. Bikki Raveendra Babu, Member Judicial)**

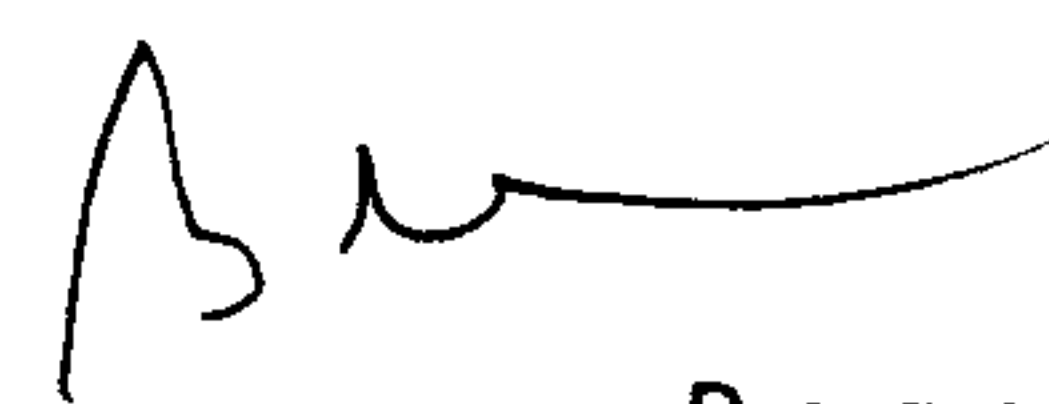
1. Kadillac Chemicals Private Limited (KCPL) filed this petition styling it as operational creditor under Section 9 of The Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as "the Code") read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 (hereinafter referred to as "the Rules") with a prayer to trigger Corporate Insolvency process in respect of Shakti Bio Science Limited (SBSL) styling it as corporate debtor.




2. SBSL is a company incorporated in the year 1995 and it is carrying on manufacturing bulk drugs and intermediates. KCPL supplied various chemical materials to SBSL from 10.06.2013 on sale basis for a total amount of Rs. 2,04,89,209/-. As against it, SBSL PAID Rs. 1,35,63,492/- leaving outstanding of Rs. 69,25,717/- till 17.10.2013. As per the purchase orders, the credit limit is only thirty days. SBSL issued cheque bearing No. 833604 for Rs. 22,01,782/- towards part payment but it was dishonoured on 02.09.2013. SBSL used to make part payments of running account basis. Accordingly, SBSL made payments of Rs. 47,69,709.64 after 17.10.2013 till the date of filing this petition. Details of payment are provided herein below: -

| Nos. | Date                                   | Cheque No. | Amount in Rs. |
|------|--|------------|---------------|
| 1    | 01.12.2013                             | RTGS       | 23,68,809/-   |
| 2    | 12.12.2013                             | RTGS       | 5,00,000/-    |
| 3    | 12.12.2013                             | RTGS       | 5,00,000/-    |
| 4    | 03.01.2014                             | RTGS       | 4,00,000/-    |
| 5    | 14.03.2014                             | RTGS       | 900.64        |
| 6    | 25.03.2014                             | 001095     | 5,00,000/-    |
| 7    | 22.04.2014                             | RTGS       | 3,00,000/-    |
| 8    | 04.09.2014                             | RTGS       | 2,00,000/-    |
|      | Total payment received on sale account |            | 47,69,709.64  |

3. Aforesaid payments were adjusted against outstanding amount in sale of material worth Rs. 69,25,717/- leaving outstanding of Rs. 21,56,007.36. MOU was entered between KCPL and SBSL on 31.10.2013 for job work. As per the MOU, SBSL shall supply material to KCPL and KCPL has to carry out job work and supply finished goods. Charge for job work is Rs. 42/- per

kg. of finished goods produced. KCPL raised the following invoices in job work and other charges such as freight, packaging etc. are as under: -

| Nos. | Date       | Invoice/Debit<br>Note Ref. No. | Amount<br>Rs. |
|------|------------|--------------------------------|---------------|
| 01   | 16.11.2013 | JB01                           | 2,16,720/-    |
| 02   | 20.11.2013 | JB02                           | 4,27,392/-    |
| 03   | 21.12.2013 | JB03                           | 6,38,484/-    |
| 04   | 02.12.2013 | SBL02                          | 52,973/-      |
| 05   | 21.12.2013 | SBL03                          | 64,669/-      |
| 06   | 01.01.2014 | SBL04                          | 25,956/-      |

4. According to KCPL all the aforesaid invoices are still outstanding for payment although credit period allowed is only 30 days. SBSL did not raise any dispute about non-payment of goods. SBSL never raised any debit note on such demand except by way of reply to the demand notice.
5. SBSL issued three cheques after the job work agreement was entered between two parties. Details of cheques issued are as follows: -

| Date of<br>cheque | Cheque<br>No. | Bank                | Amount<br>Rs. |
|-------------------|---------------|---------------------|---------------|
| 26.03.2014        | 001096        | Allahabad Bank      | 4,00,000/-    |
| 10.01.2015        | 003603        | Allahabad Bank      | 4,00,000/-    |
| 04.04.2015        | 203255        | Union Bank of India | 5,00,000/-    |

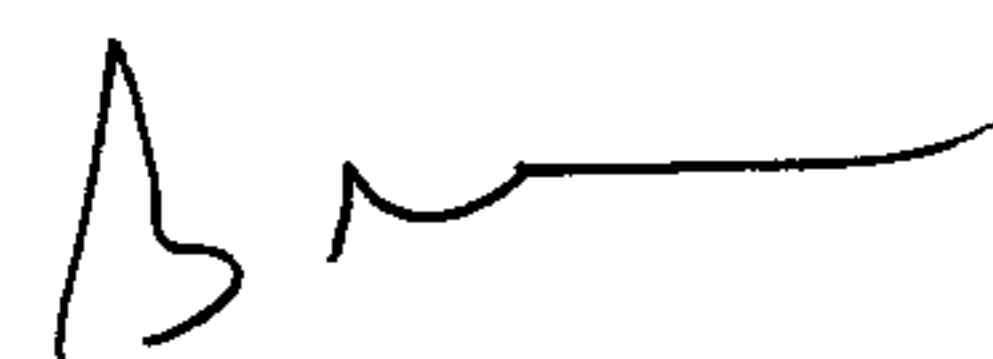
6. It is stated by KCPL that SBSL never raised objection for stopping the job work by KCPL till the reply notice was given. KCPL after waiting for a long period decided to initiate action





under provisions of Insolvency Code. KCPL issued demand notice in form No. 3 and 4 on 28.08.2017 to SBSL demanding aggregate outstanding payment of 35,82,201/- with interest @ 24% per annum computed after credit of 30 days from the date of invoice i.e. Rs. 32,35,262/- up to 24.08.2016 making aggregate claim of Rs. 68,17,463/-. The said notice was issued to SBSL and its Directors requesting them to make payment within ten days. The notice sent by registered post to the corporate office of SBSL and the residential address of two Directors returned as refused. KCPL also sent demand notice by e-mail dated 29.08.2017. After receipt of demand notice SBSL never raised any issue with the petitioner i.e. earlier in the last three and half years. It is the case of KSPL that SBSL manufactured the sham defence to avoid outstanding payment to KCPL. KCPL also stated in the petition as well as in the demand notice that raw material received for the job work purpose is lying with and as and when the full payment is received from the corporate debtor the same shall be returned. Raw material supplied by SBSL were never accounted in the books of KCPL. According to KCPL any dispute raised after receipt of demand notice shall not be treated as existence of dispute. KSPL also stated that the Dispute raised in the reply notice is not supported by any document.

7. Board of Directors of KCPL in its meeting held on 16.08.2017 resolved to initiate proceedings against SBSL under the Insolvency and Bankruptcy Code, 2016 and further resolved

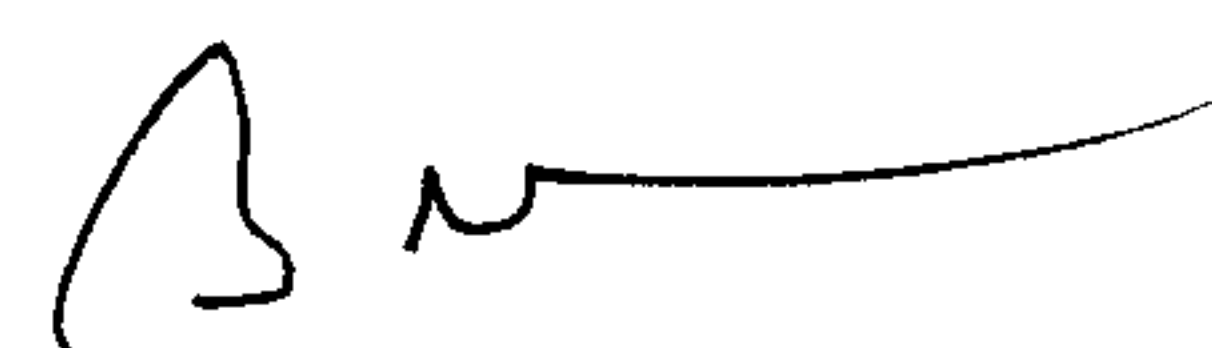


authorising the Directors to sign and execute such necessary notices, petitions, affidavits, declarations etc. Mr. Lakshak Patel, Director filed this petition.

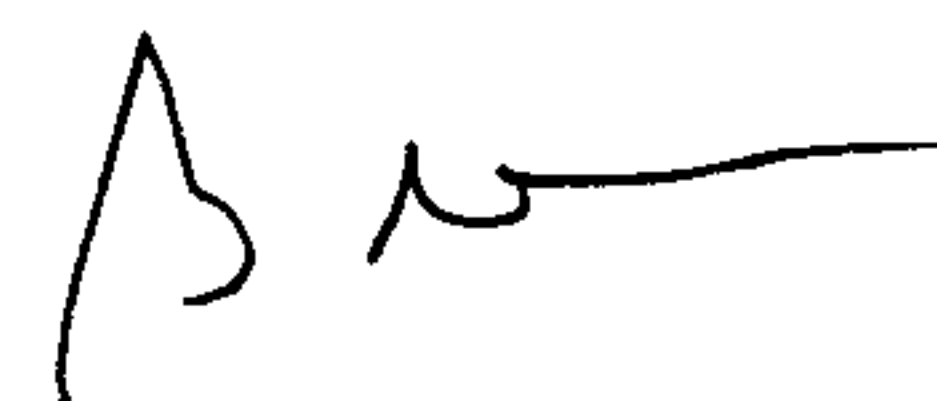
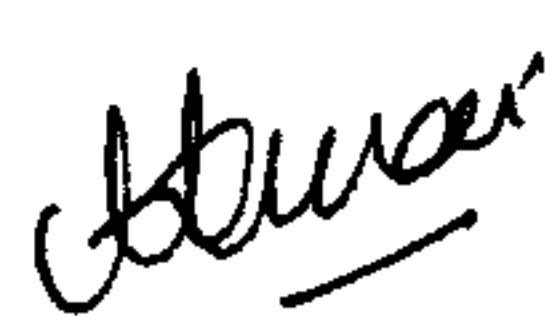
8. KCPL filed copy of ledger accounts of SBSL in the books of KCPL copies of outstanding invoices along with copy of delivery challans, copy of delivery challans for receipt of raw materials for job work purpose, copies of two bounced cheques, copies of income-tax returns, copies of balance sheet and profit and loss account for the year 2016-17, copy of reply received from SBSL, copy of job work MOU and copy of Board Resolutions of KCPL. KCPL filed affidavit in support of the petition and the affidavit as required by IB Code Section 9. KCPL also filed written communication in form No. 2 of Interim Resolution Professional Mr. CS Sitansh Magia.

9. Following are the objections raised by SBSL: -

- (1) KCPL unnecessarily added Directors of SBSL as parties and therefore the petition is bad for mis-joinder of parties.
- (2) Form 3 is not as per Rule 5 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 and, therefore, it is not a valid notice.
- (3) Petition is barred by limitation

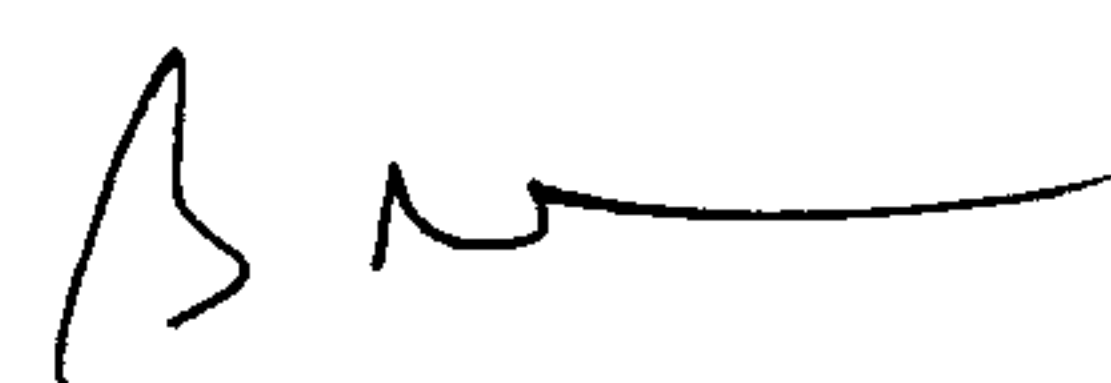


- (4) KCPL is not doing job work as per MOU and retained the raw material.
- (5) Cheques issued were not against payment of amount and they were issued for guarantee purpose, and they that were misused by KCPL.
10. First objection of SBSL is that Directors of SBSL were shown as respondents. In form No. 5 Applicant is shown as KCPL whereas SBSL is only shown as corporate debtor. KCPL apart from filing form No. 5 under Section 9 of Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 before this adjudicating authority, also filed form No. 1 as per NCLT Rules which is required to be filed before NCLT in company matters. In that petition KCPL shown all the three Directors of SBSL as respondents, but relief is prayed only against SBSL. For the purpose of this petition under provisions of IB Code we have to go only by form No. 5 but not by form No. 1 in NCLT Rules. Moreover, no relief is prayed against Directors of SBSL. Therefore, on the ground of joining Directors of SBSL as respondents, this petition cannot be thrown out.
11. SBSL except saying form No. 3 is not as per Code has not pointed out how it is not according to the Rule 5 of Adjudication Rules.





12. A perusal of form No. 3 and 4 filed along with petition which are available as Ex. A & B clearly show that they are in accordance with forms provided under the Rules. Person signed in form No. 3 discloses his name and his company address also. KCPL also filed resolution of the company authorising the Director to initiate action under the provisions of the I.B. Code. Therefore, in all respects, form No. 3 and 4 issued by KCPL to SBSL is in accordance with Rules.
13. It is the case of the Respondent that the petitioner himself admits vide letter dated 17.10.2013 that there is outstanding of Rs. 69,25,717/- and out of it Rs. 47,69,709.64 was paid leaving a balance of Rs. 21,56,007.36 by September, 2014. It is also the case of respondent that MOU was entered between KCPL and SBSL on 31.10.2013 for job work purpose. However, it is the case of the petitioner that the balance payment made by SBSL on 10.01.2015 by way of cheques were dishonoured and therefore the claim is within time. It is also case of the petitioner that the amount is in the form of running account and SBSL used to make part payments. Therefore, the claim of the petitioner is not at all barred by limitation by the date of filing of this petition. Even otherwise, it is the contention of the learned PCS for operational creditor that provisions of Limitation Act is not applicable for the proceedings in I.B. Code. In support of his contention he relied upon the following decisions rendered by NCLAT, New Delhi.

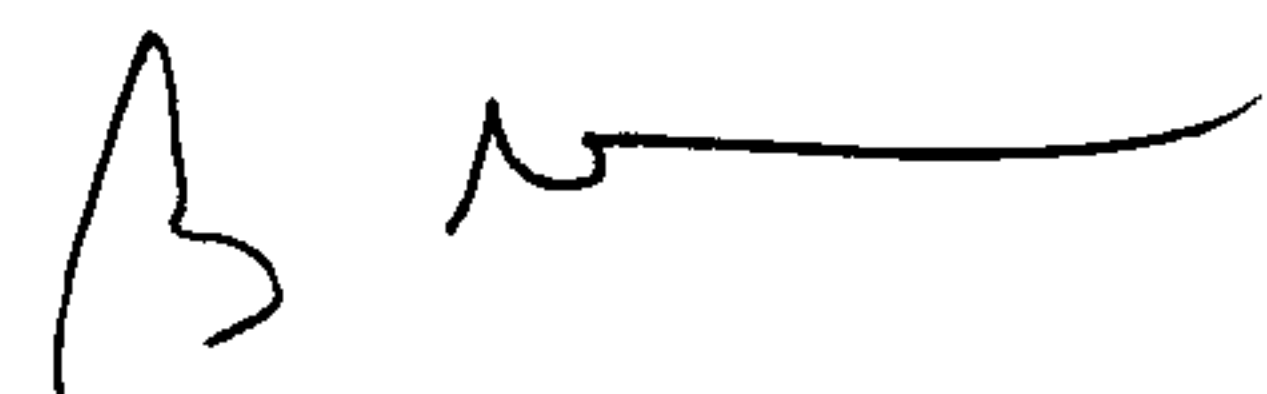
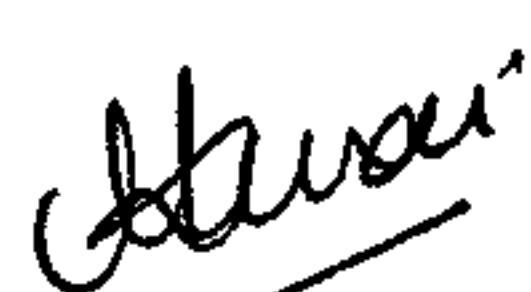


(1) Black Pearl Hotels Pvt. Ltd. vs. Planet M. Retail Ltd. in  
Company Appeal No. 91 of 2017 decided on 17.10.2017.

(2) Sanjay Bagrodia vs. Sathyam Green Power Pvt. Ltd. in  
Company Appeal No. 193 of 2017 decided on  
15.11.2017.

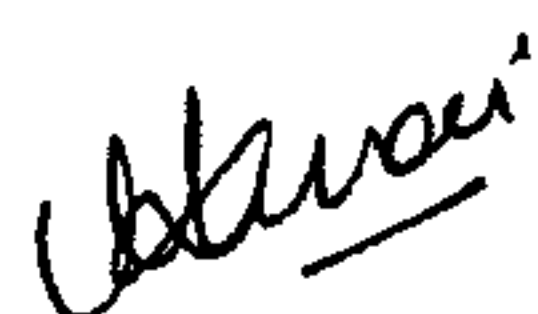
In view of the above decisions of NCLAT it can only be said that  
Limitation Act is not applicable.

14. Crucial objection is the dispute raised by SBSL in the reply notice dated 05.09.2017. Dispute raised by SBSL is that there was an MOU between KCPL and SBSL on 31.10.2013 and as per the said MOU, SBSL will send raw material to KCPL for conversion. KCPL will dispatch in ratio as per annexure – 2 of the MOU. Further, in accordance with clause 3 of said MOU it is agreed by both the parties that specification will be given by SBSL as per annexure – 3 of the said MOU. Further, as per clause 7 of the said MOU, it is prayed by both the parties that conversion charges will be paid by SBSL to KCPL for job work of manufacturing Benzaldehyde at the rate of Rs. 42/- per kg. Further it is the case of SBSL that they had purchased raw material from Kesar Color Chem Industries and SKS Glochem respectively for providing the same to KCPL for the purpose of job work and accordingly SBSL supplied raw material to KCPL and KCPL acknowledged it. Further, SBSL purchased liquid chlorine from Bleach Chem for providing the same to job work



and the same was also delivered at the address of KCPL. According to SBSL worth of the raw material illegally retained KCPL is Rs. 34,91,581/- and due to retaining of the raw material and not doing job work SBSL suffered a loss of Rs. 60.00 lacs.

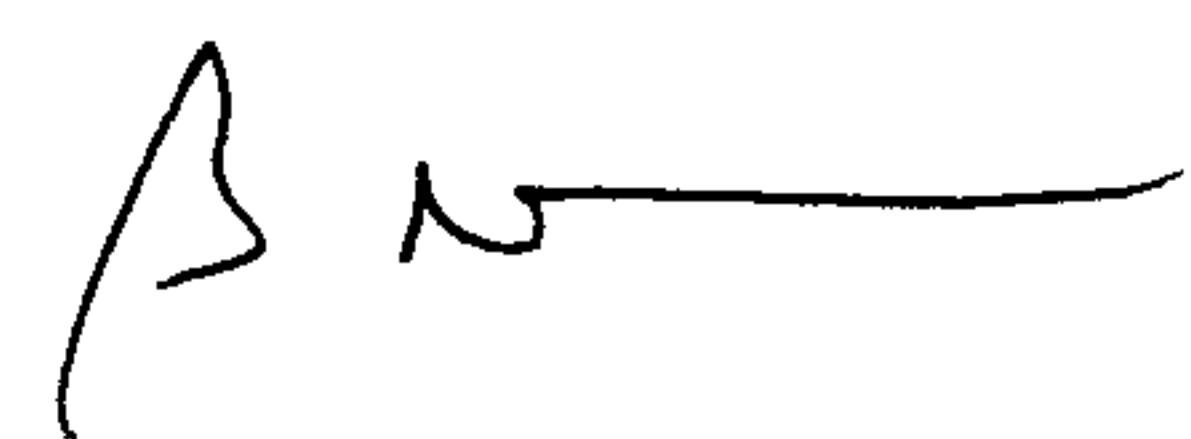
15. Now it has to be seen whether such dispute is covered by definition of 'dispute' under section 5 (6) of the IB Code. Since the dispute raised by Respondent relate to service namely manufacture of finished products by KCPL from the raw material supplied by SBSL, it is a dispute within the meaning of section 5(6)(b) of IB Code.
16. Contention of learned PCS appearing for KCPL is that the dispute must be raised before receipt of Demand Notice and dispute raised for the first time in the reply notice is not at all a dispute and it is illusory dispute created for the purpose of avoiding payment. In support of his contention he relied upon the following decisions.
  - (1) United Projects Constructions Ltd. vs. Aerocon Buildwell Pvt. Ltd. in Company Appeal No. 164 of 2017 decided on 13.11.2017, by NCLAT, New Delhi
  - (2) VDS Plastics Pvt. Ltd. vs. Pal Mohan Electronics P. Ltd. in Company Petition No. 37 of 2017 decided on 21.04.2017 by NCLT, Delhi




(3) DF Deutsche Forfait AG anr. Vs. Uttam Galva Steel Ltd.  
in CP No. 45/I&B/NCLT/MAH/2017 decided on  
10.04.2017 by NCLT, Mumbai

17. On the other hand learned counsel for the respondent contended that the very admission of the petitioner that he has retained the raw material from the year 2014 onwards clearly goes to show that there is existence of dispute between KCPL and SBSL. He further contended that it is admitted case of the petitioner that he has not furnished finished goods although raw material is available with him and that itself shows that KCPL violated terms and conditions of MOU dated 31.10.2013 and, therefore, there is existence of dispute even before issuance of notice and such dispute has been brought to the notice of the operational creditors in the reply to the demand notice as required by Section 8 (2) of the IB Code.

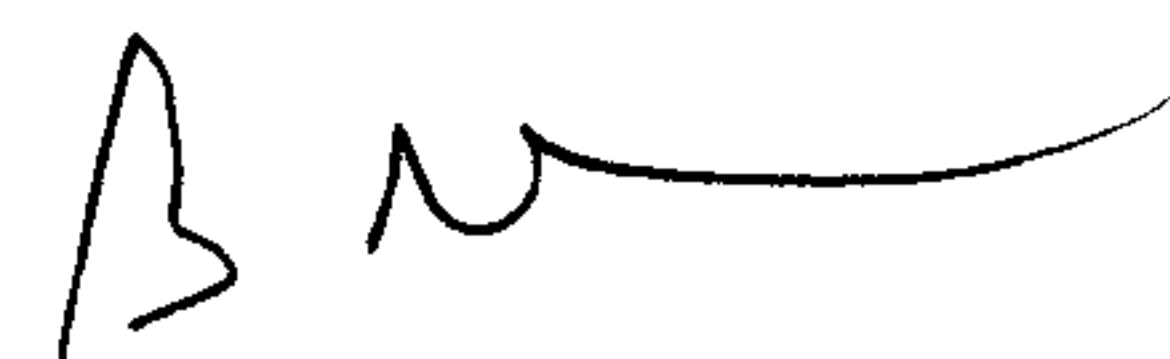
18. It is contended by learned CS for the operational creditor that till notice was issued no dispute was raised by SBSL and, therefore, the dispute is raised only as defence to this petition but it is not a real dispute. He further contended that issuance of cheques towards payment of outstanding amount goes to show that no dispute was raised by SBSL regarding the retaining of raw material and not doing job work as per MOU.





19. On the aspect of dispute, this Tribunal has to follow the judgement of Hon'ble Supreme Court of India in Mobilox Innovations Pvt. Ltd. vs. Kirusa Software Private Limited. in Civil Appeal No. 9405 of 2017. In that judgement, in para 40 it is clearly 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 credit 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

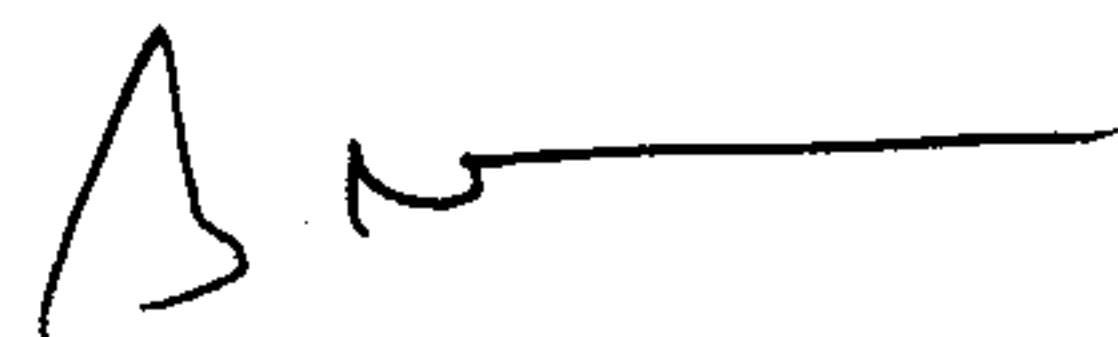




truly exists in fact and is not spurious, hypothetical or illusory, the adjudicating authority has to reject the application."

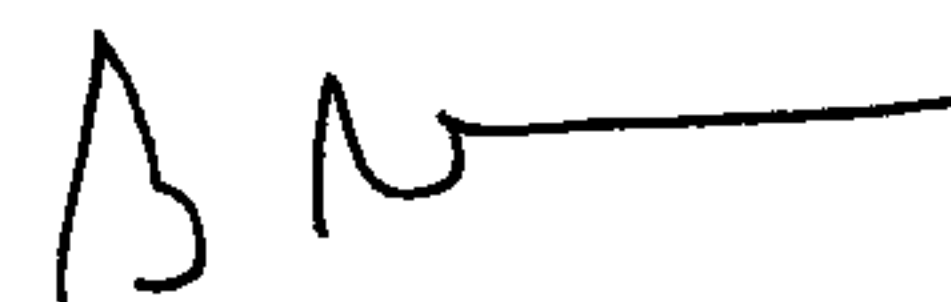
20. No doubt in Mobilox Innovations Pvt. Ltd. case there was correspondence to show that there exists a dispute between the parties. But Hon'ble Supreme Court in the decision of Mobilox Innovations Pvt. Ltd. held that existence of dispute has to be brought to the notice of the operational creditors in the notice of dispute. It is nowhere stated that a dispute has to be brought to the notice of the operational creditor before the issuance of notice under Section 8 of the Code. Adjudicating Authority has to see whether there exists a dispute between operational creditor and corporate debtor. The purpose behind asking corporate debtor to issue reply notice is to bring it to the notice of the operational creditor that a dispute exists even prior to issuance of notice. Therefore, Adjudicating Authority must make endeavour to find out whether there is any material on record to show there exists a dispute between KCPL and SBSL in respect of the claim made in this petition and whether such dispute is not patently feasible legal argument or an ascertain of facts unsupported by evidence.

21. In the judgement in United Projects Constructions Ltd. vs. Aerocon Buildwell P. Ltd. also NCLAT, New Delhi only directed this Tribunal to reconsider, if there is any document available on record to suggest existence of dispute prior to serving of



demand note to operational creditor and whether respondent created certain documents to stall Corporate Insolvency Resolution Process against it.

22. This Tribunal has to see whether in fact of dispute exist, by the date of issuance of Demand notice.
23. The crucial aspect in this case is whether dispute mentioned in the reply notice given by the corporate debtor to the operational creditor was there in existence even before the date of issuance of demand notice under Section 8 of the Code. Dispute mentioned in the reply notice is operational creditor failed to supply the finished goods as per MOU dated 31.10.2013. Operational creditor also retained the raw material that supplied to the operational creditor from and on behalf of the corporate debtor. The fact that raw material belonging to the corporate debtor has been retained by the operational creditor is an admission by the operational creditor. To appreciate this fact, it is necessary to examine the dates of events. MOU was entered into on 31.10.2013. Amount claimed in the invoices is from 16.11.2013 to 01.01.2014. The supply of various chemical materials by the petitioner to the respondent from 10.06.2013 to 17.10.2013. According to the petitioner payments were made from 01.12.2013 to 04.09.2014.
24. According to the petitioner cheques dated 26.03.2014, 10.01.2015 and 04.04.2015 were issued by the respondent towards payment of balance amount due to petitioner. Among

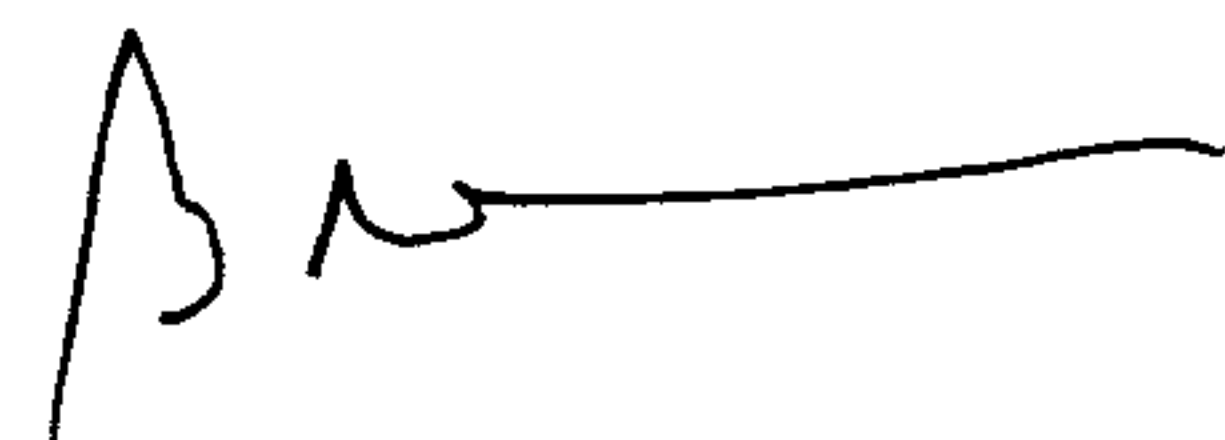
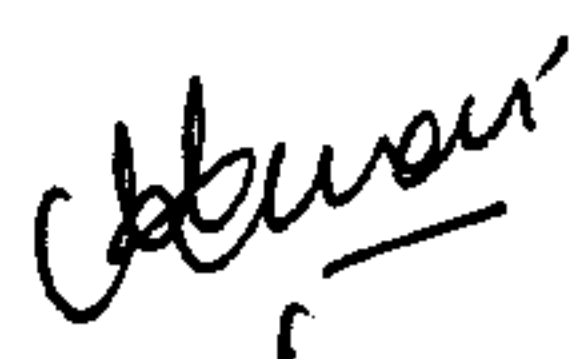
three cheques, cheques dated 10.01.2015 and 04.04.2015 were dishonoured.

25. It is contended by petitioner, if really dispute exist between the petitioner and respondent and for that reason the raw material supplied by the respondent was retained by the petitioner, then there is no reason for the respondent to issue cheques dated 10.01.2015 and 04.04.2015 also. The very fact that respondent issued cheques even on 04.04.2015 shows that till that date he has not raised any dispute regarding non-supply of finished goods as per MOU dated 31.10.2013. It is contended by learned counsel for the respondent that the cheques were issued not in the year 2015 or 2014 and they were issued as a security when the MOU was entered into. But there is no material at least to show that post-dated cheques were issued or blank cheques were issued. Learned counsel for petitioner relied upon decision of Hon'ble Supreme Court of India in Sampelly Satanarayana Rao vs. Indian Renewable Energy Development Agency Ltd. (Cri Appeal no. 867/2016 decided on 19.09.2016) sections referred in relating to cases under section 138 of Negotiable Instrument Act and contended that the cheques even issued for the security purpose if they are dishonoured, for insufficient funds the offence under section 138 of Negotiable Instrument Act is made out. In the case on hand we are not on the point whether the dishonoured cheques clothes the respondent with any criminal liability. Here the controversy is whether cheques were issued on 10.01.2015



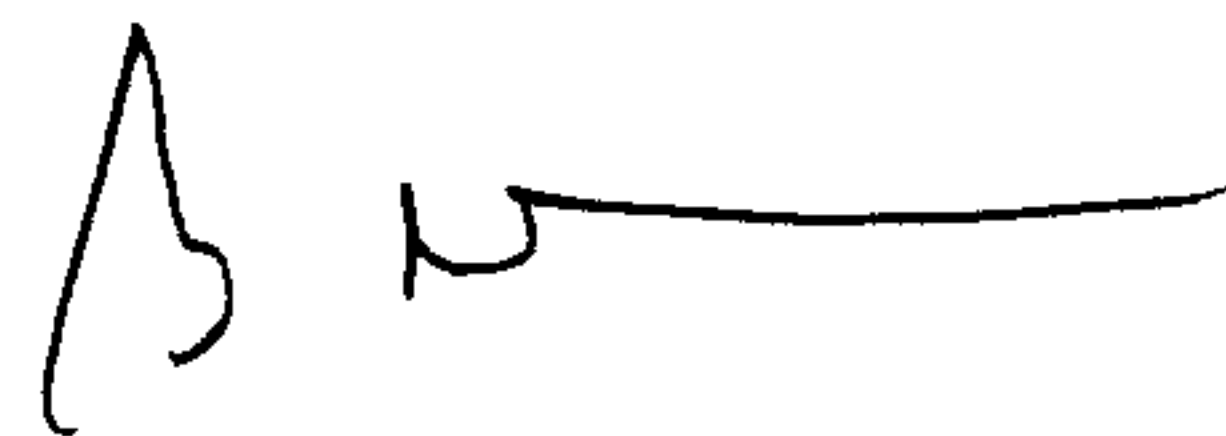
and 04.04.2015 or on the date of MOU 31.10.2013. In the absence of any material to show that the cheques were issued on 31.10.2013 it shall be presumed that the cheques were issued on the date that was appearing on the cheques. Therefore, the issuance of cheques in the year 2014 and 2015 clearly goes to show that there was no existence of dispute between the petitioner and respondent before issuance of demand notice. Therefore, it is a clear a case where a dispute has been raised for the first time in the reply notice. It is not a case where existing dispute has been brought to the notice of the petitioner by the respondent.

26. In that view of the matter and in view of the fact that petition is complete in all respects it deserves to be admitted. Petition is accordingly admitted.
27. In the case on hand petitioner has proposed the name of Mr. Sitansh Magia, Flat No. 6, Kamdar Chamber, A wing, Plot No. 251, Sion (East), Mumbai 400 022.
28. Adjudicating Authority hereby appoint Mr. Sitansh Magia, CS, as Interim Insolvency Resolution Professional having address at Flat No. 6, Kamdar Chamber, A wing, Plot No. 251, Sion (East), Mumbai 400 022 with Registration No. IBBI/IPA-002/IP-N00293/2017-18/10850 u/s 13 (1)(c) of the Code.





29. The interim Insolvency Resolution Professional is hereby directed to cause a public announcement of the initiation of Corporate Insolvency Resolution Process and call for submission of claims under Section 13 (1)(b) read with Section 15 of the Code and Regulation 6 of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations 2016.
30. This adjudicating Authority hereby order moratorium under Section 13 (1) (a) of the IB Code prohibiting the following as referred to in Section 14 of the Code;
- (a) the institution of suits or continuation of pending suits or proceedings against the company/ corporate debtor including execution of any judgement, decree or order in any court of law, Tribunal, arbitration panel or other authority;
  - (b) transferring, encumbering, alienating or disposing of by the company/corporate debtor any of its assets or any legal right or beneficial interest therein;
  - (c) any action to foreclose, recover or enforce any security interest created by the company/ corporate debtor in respect of its property including any action under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (54 of 2002);





(d) the recovery of any property by an owner or lessor where such property is occupied by or in the possession of the company/corporate debtor.

(i) There shall not be any interruption, suspension or termination of supply of essential goods or services to the corporate debtor during the moratorium period.

(ii) The order of moratorium is not applicable to the transactions that may be notified by the Central Government in consultation with any financial sector regulator.

(iii) The order of moratorium comes into force from the date of the order till the completion of Corporate Insolvency Resolution Process subject to the proviso under sub-section (4) of Section 14.

31. This application is disposed of accordingly. No order as to costs.

32. Communicate a copy of this order to the petitioner operational creditor and to the respondent corporate debtor and to the Interim Insolvency Resolution Professional.



**Ms. Manorama Kumari,**  
**Member Judicial**  
**Adjudicating Authority**

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**Bikki Raveendra Babu**  
**Member Judicial**  
**Adjudicating Authority**