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

C.P. (I.B) No. 47/9/NCLT/AHM/2017

Coram:

Present: Hon'ble Mr. BIKKI RAVEENDRA BABU
MEMBER JUDICIAL

ATTENDANCE-CUM-ORDER SHEET OF THE HEARING OF AHMEDABAD
BENCH OF THE NATIONAL COMPANY LAW TRIBUNAL ON 01.08.2017

Name of the Company: Futuristic Marketing Solutions
V/s.
Shree Ram Multi-Tech Ltd.


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

S.NO.	NAME (CAPITAL LETTERS)	DESIGNATION	REPRESENTATION	SIGNATURE
1.	Tanya Shah	Advocate	Applicant	Tanya Shah
2.	CA PATEL RAMUBHAI S	Chartered Accountant Authorized	Shree Rama Multi Tech Ltd.	Patel
	MONAAL DAVAWALA	ADVOCATE	RESPONDENT	Monaal

ORDER

Learned Advocate Ms. Tanya Shah present for Operational Creditor/ Applicant.
Learned FCA Mr. Ramubhai patel with Learned Advocate Mr. Monaal Davawala
present for Respondent.

Order pronounced in open Court. Vide separate sheet.


BIKKI RAVEENDRA BABU
MEMBER JUDICIAL

Dated this the 1st day of August, 2017.

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

CP(IB) No.47/9/NCLT/AHM/2017

In the matter of :-

M/s Futuristic Marketing Solutions,
203, Pancharatna Apartment,
2, Maharashtra Society,
Near HCG Hospital,
Mithakhali Six Road,
Ahmedabad - 380006.

...

Applicant/Operational Creditor

Vs.

Shree Rama Multi-Tech Limited,
301, Corporate House,
Opp. Torrent House,
Income Tax, Ahmedabad,
Gujarat - 380009.

...

Respondent/Corporate Debtor

Order delivered on 1st August, 2017

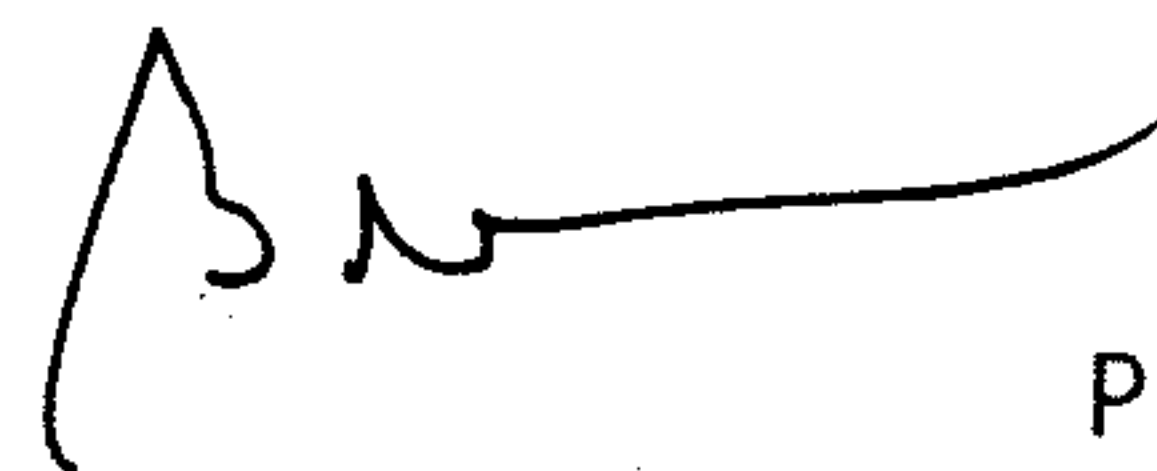
Coram: Hon'ble Sri Bikki Raveendra Babu, Member (J)

Appearance:

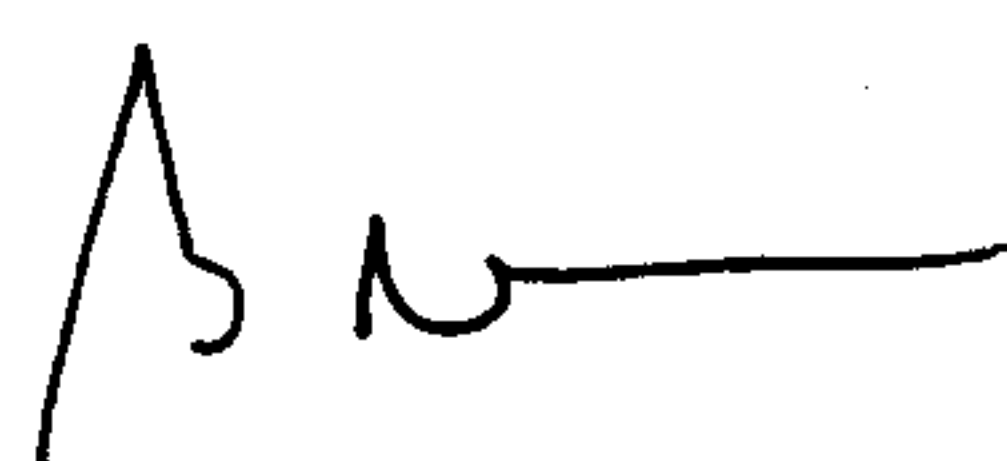
1. Mr Dhaval Shah with Ms. Tanaya Shah, Advocates for the Applicant/Operational Creditor.
2. Mr. Ramubhai Patel, FCA with Mr. Monaal Davawala, Advocate for the Respondent/Corporate Debtor.

ORDER

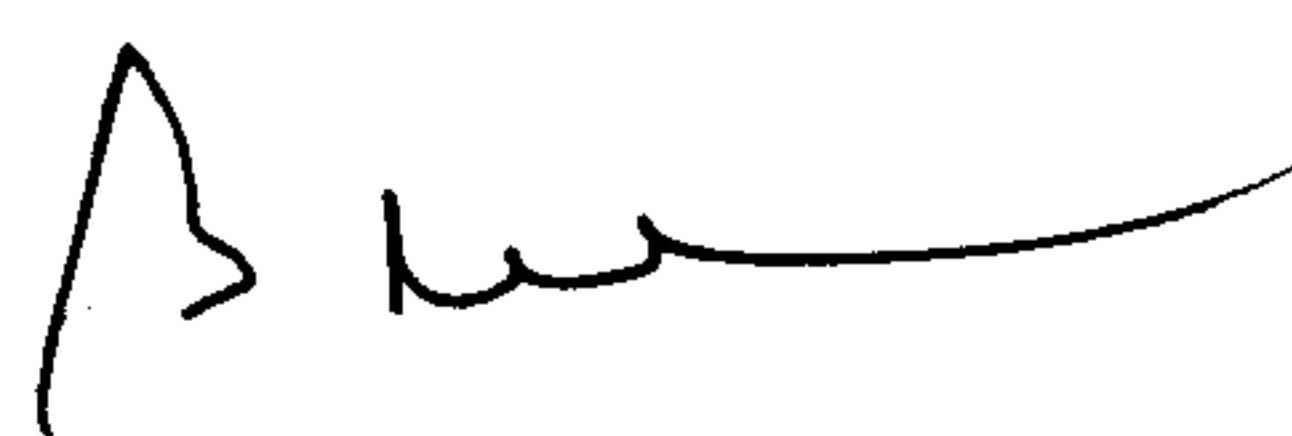
1. M/s Futuristic Marketing Solutions filed this application seeking Corporate Insolvency Resolution under Section 9 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as "the Code") read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 (hereinafter referred to as "the Rules").



2. The facts, in brief, that led the applicant-operational creditor to initiate the present proceedings are as follows :-
3. Shree Rama Multi-Tech Limited (hereinafter called as "the respondent or corporate debtor") had placed order with M/s Futuristic Marketing Solutions (hereinafter called as "the applicant or operational creditor") for supply of aluminium foils of different specifications vide Purchase Order No.P0003753 dated 9th July, 2014. Pursuant to the said order, the applicant supplied aluminium foils of the value of Rs.14,17,384/- as per Invoice No.14-15/025 dated 11th July, 2014. The respondent acknowledged the delivery of the material in a good condition, as is evident from corresponding Challan No.14-15/025. The respondent again placed another Purchase Order No.P0003911 dated 1st August, 2014, which was also duly supplied to the respondent as against Invoice No.14-15/035 dated 8th August, 2014. The respondent also acknowledged the said material in good condition, as is evident from Challan No.14-15/035. In all the applicant supplied goods/material in the months of July and August, 2014 totalling to INR 15,58,676/-. The respondent accepted the goods without any objection or complaint as to quantity, quality or technical specifications.
4. As per the terms and conditions of the Purchase Order, respondent shall make payment against each invoice raised



within 30 days. However, the respondent failed to make payment within time. The applicant issued e-mail dated 1st August, 2014 followed by further e-mails in the months of August and September, 2014. The respondent did not give reply to the e-mails. The respondent also did not raise any objection regarding the quantity, quality and technical specifications of the goods supplied. On the other hand, the respondent on 29th September, 2014 placed another order for supply of aluminium foil. But the applicant informed on 30th September, 2014 that since payments of earlier orders were still outstanding, they were unable to supply further material unless advance payment was made. The respondent by e-mail dated 7th October, 2014 stated that they were not in a position to pay in advance. The applicant again sent an e-mail on 9th October, 2014 to the respondent calling upon the respondent to release payment. In the months of October, November and December, 2014 also, the applicant sent e-mails to the respondent and the respondent did not give any reply. However, on 27th January, 2015, the respondent rejected the entire lot of goods supplied without any reason. On 27th January, 2015, the applicant sent an e-mail to the respondent asking the respondent to send the photos of the material lying with it, so that the same can be investigated by the manufacturing company. But the respondent did not provide the sample or photographs of the materials supplied by the applicant. The respondent even did not choose to return the material which it alleged to be of inferior quality. On 18.4.2015,



the applicant again called upon the respondent to pay the outstanding amount of Rs.15,58,676/- and, thereafter also, issued several e-mails to the respondent. Ultimately, on 26th July, 2016, the applicant got issued a notice through its counsel for winding up under Section 271 of the Companies Act, 2013. The respondent gave reply on 17th August, 2016 and 25th August, 2016 denying the averments made in the notice. Again on 10th October, 2016, the applicant demanded payment of Rs.15,58,676/- along with interest of Rs.5,52,254/- totalling to Rs.21,10,930/-, as on 31st March, 2016. According to the applicant, an amount of Rs.22,53,133/- was due and payable by the respondent as on 1st February, 2017 along with interest at 18% per annum from 1st February, 2017 till the actual date of payment.

5. The applicant issued a demand notice dated 2nd February, 2017 in Form No.3 annexing the Purchase Orders and Invoices. The demand notice was delivered to the respondent company on 3rd February, 2017 at its registered office. The respondent replied to the aforesaid demand notice vide letter dated 10th March, 2017. The applicant stated that no suit, arbitration proceedings or other proceedings are pending before any judicial forum or authority relating to the unpaid operational debt. According to the applicant, the respondent raised a purported dispute against the unpaid operational debt, for the first time, by way of letter dated 10th March, 2017, in reply to the notice of demand

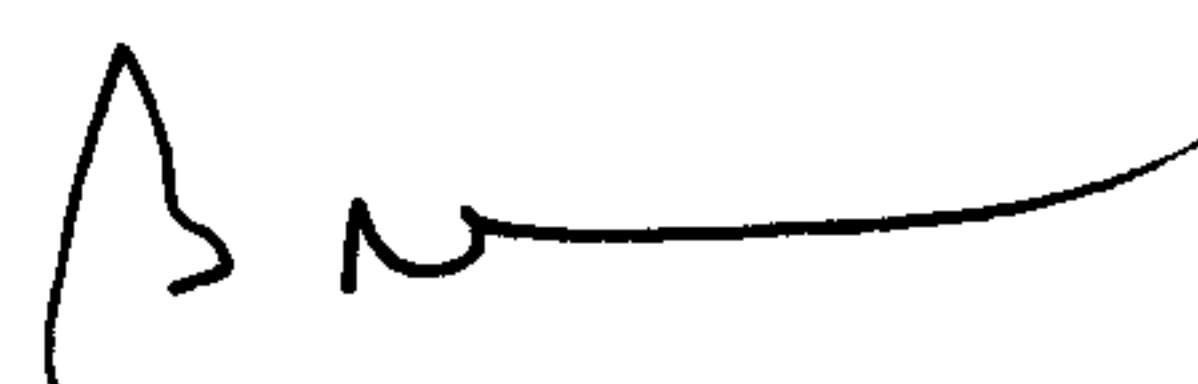


addressed by the applicant. It is the case of the applicant that, in fact, there is no such dispute and the respondent has raised the dispute for the sake of dispute only with a view to stall the insolvency resolution process.

6. This matter was listed before this Adjudicating Authority, for the first time, on 12.7.2017. On that day, the respondent appeared through its counsel and filed documents. Again, on 19.7.2017, the respondent filed additional affidavit in reply.

7. It is the case of the respondent that the demand notice dated 2nd February, 2017 was sent to 603, Shikhar, Shrimali Society, Mithkhali, Ahmedabad. The applicant claims that the demand notice was delivered on 3rd February, 2017. It is stated by the respondent that the above said address was old address and the same was changed by the respondent company on 6.11.2015 by giving due intimation to the Registrar of Companies and NSE and BSE authorities as the company is a listed company. To substantiate the same, the respondent filed copy of Form No.INC-22. It is also pleaded by the respondent that the applicant did not enclose demand notice in Form-3 or copy of the invoice sent in Form-4 with the application.

8. It is the contention of the respondent that no demand notice has been given, as alleged by the applicant. It is stated by

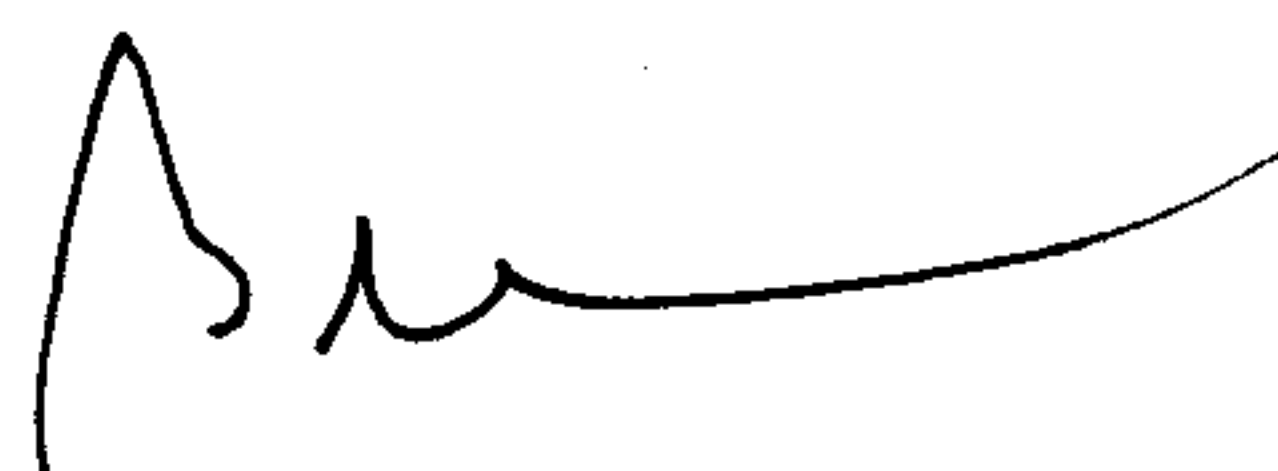


the respondent that the respondent company is a listed company with a financial exposure of Rs.183 crore as on 31st March, 2016 and turnover of more than Rs. 120 crore with 800 workers and 250 employees in 15 different departments. The respondent company is engaged in the production of lumi tubes, laminates, polyester film, printing of tubes, etc. for the last 22 years and it is the third largest lumi tubes manufacturing company in India. According to the respondent company, it has no over dues as on date and that the company is dealing with multinational customers. The respondent stated that it normally uses foil in the production of laminate to create a barrier of chemical reaction. The respondent company used to receive bulk orders of production. In order to meet with bulk orders, the respondent company used to procure raw materials, including foil, in advance before 3 to 4 months. According to the respondent, the shelf life of the material is two years. Normally, the respondent company keeps 4 to 6 months' stock to be used as and when orders are received. In the purchase orders placed on record by the applicant, it is clearly mentioned as follows :-

"Material should be free from Pin Hole & Crease".

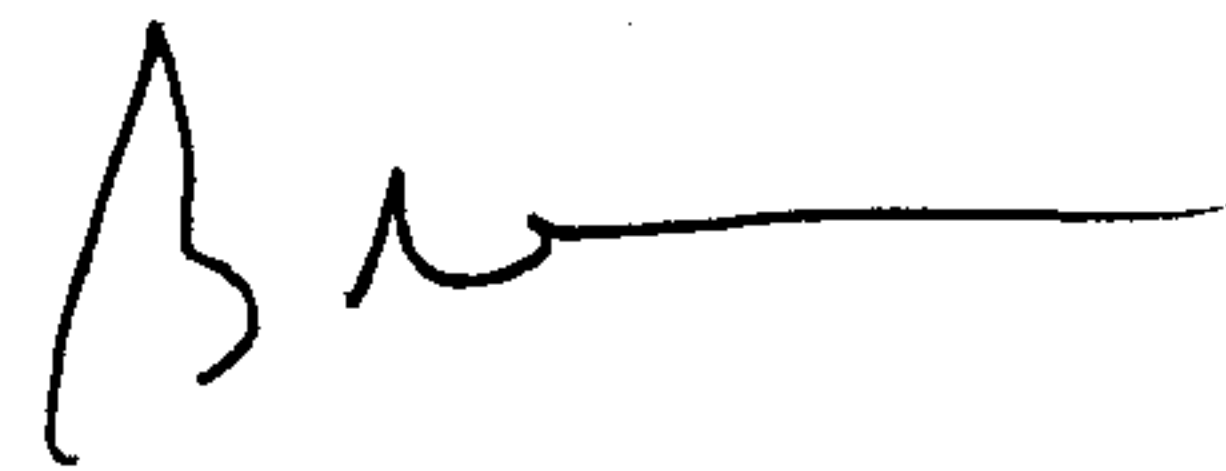
The reason for rejection was communicated to the applicant stating that the foils supplied by them were not crease free. According to the respondent, it is evident from pages 13, 14, 17 and 18 of the paper book of the applicant. It is the case of the respondent that out of 5765 kgs. of foil procured from the applicant, the respondent used 800 kgs. in trial run, which

resulted in 2500 kgs. of laminate production. The laminate produced from 800 kgs. of foil was of substandard quality and, therefore, it was rejected by the QC Department. Eventually, the entire lot of foil procured from the applicant, being substandard, was rejected. The mail sent to the operational creditor on 24.1.2015 regarding quality test by QC Department of the Corporate Debtor shows that it was substandard quality. The said mail is there in paper book of the applicant at page 35. The respondent further stated the applicant was also engaged in job work through its group company known as Futuristic Packaging Private Limited in lacquer coating of laminated flexibles. The respondent company suffered huge losses as a result of poor quality of lacquer used for the job work, which was done for Hindustan Latex Ltd., which is a client of the respondent company. Hindustan Latex Ltd. rejected the entire lot. The loss caused to the respondent company was on account of substandard lacquer coating done by Futuristic Packaging Private Limited. Hence, the respondent company filed a suit for Rs.54.52 lakh against Futuristic Packaging Private Limited. It is stated by the respondent that the Operational Creditor is supplier of defective material or services. It is further stated that the reply of the Corporate Debtor dated 25th August, 2016 clearly spells out the quality dispute for the material in question, which is available in pages 48 to 52 of the paper book of the applicant. The respondent, therefore, requested the Adjudicating Authority to dismiss the application.




9. The material on record clearly discloses that basing on the purchase orders placed by the respondent company, the applicant company supplied material in the months of July and August, 2014. The respondent company took a plea that the material supplied by the applicant was of substandard quality and the same was informed to the applicant by a mail dated 24.1.2015, which is available at page 35 of the application. The respondent also placed on record a mail from Production Department to QC Department of the respondent company, which is dated 10.12.2014, which is filed as Annexure F-1 by the respondent. A perusal of the above said document clearly goes to show that the respondent raised a dispute about the quality of the foil supplied by the applicant company in the months of July and August, 2014.

10. It is contended by the learned counsel for the applicant that the material was supplied to the respondent company in the months of July and August, 2014 and no objection was raised by the respondent company regarding the quality of material supplied till January, 2015 and, therefore, the dispute regarding the quality raised by the respondent is an afterthought and a mala fide dispute.



11. It is contended by the learned counsel appearing for the respondent that the respondent company used to receive bulk orders and, therefore, it used to order for supply of raw materials well in advance and will make use of the raw materials only as and when bulk orders are received and sometimes even four or five months after the material is supplied. This argument of the learned counsel for the respondent appears to be more probable than the argument of the learned counsel for the petitioner that delay in raising the dispute regarding the quality makes the dispute a mala fide one. Even in the reply to the demand notice issued by the applicant, the respondent clearly raised the dispute regarding the quality of goods supplied. Therefore, from the facts of this case, it is clear that the respondent raised a dispute regarding quality of the goods supplied by the applicant. The said dispute was raised in the month of January, 2015 itself even before the issuance of demand notice dated 2nd February, 2017. Learned counsel for the applicant, in support of his contentions, relied upon the judgments of the Honourable High Court of Gujarat in Company Petitions Nos.170 of 2010, 136 of 2011 and 185 of 2013. The said decisions relied upon by the learned counsel for the applicant were rendered in winding up petitions. In all those decisions, basing on the facts of those cases, the Honourable High Court held that the dispute raised by the respondents are in the nature of afterthought and lack bona fides. But, in the case on hand, a dispute has been raised in the month of January, 2015 by the respondent regarding the quality

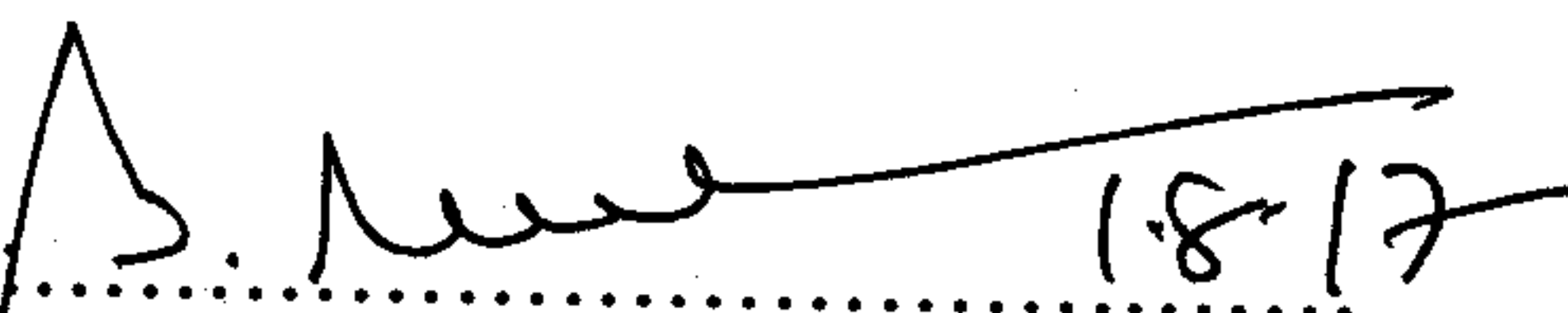


of goods supplied and that too, even before the issuance of the demand notice. The Quality Department of the respondent company also certified that the material supplied by the applicant company was of substandard quality. From the facts of the case, it is clear that the dispute raised is not an afterthought and it is not a mala fide dispute. On the other hand, the dispute raised by the respondent company regarding the quality of goods is a bona fide dispute based on substantial grounds.

12. Both the applicant and the respondent relied upon the decision of the National Company Law Appellate Tribunal in Company Appeal (AT)(Insolvency) 6 of 2017. In that judgment, the Honourable Appellate Tribunal, taking into consideration the definitions of "Claim", "Debt", "Default" and "Dispute", gave finding that dispute under I&B Code, 2016 must relate to specified nature in clause (a), (b) or (c) of sub section (6) of section 5, i.e. existence of amount of debt or quality of goods or service or breach of representation or warranty. The Appellate Tribunal also held that the dispute not only be discernible in a suit or arbitration but from any document related to it. The Honourable Appellate Tribunal also held that mere raising of dispute, for the sake of dispute, unrelated or related to clause (a) or (b) or (c) of sub-section (6) of Section 5, if not raised prior to application and not pending before any competent court or authority cannot be relied upon to hold that there is a dispute raised by the Corporate

Debtor. Applying the principles laid down by the Honourable Appellate Tribunal, in the case on hand, a bona fide dispute on substantial grounds regarding the quality of goods supplied has been raised by the respondent in the month of January, 2015 before the issuance of demand notice under Section 8 of the Code. Therefore, this Adjudicating Authority is of the view that it is not a fit case to admit this petition for initiation of Corporate Insolvency Resolution Process. However, the findings in this order may not come in the way of the Operational Creditor to enforce remedies that are available to it under other laws in any other forum.

13. In the result, this application is dismissed. No order as to costs.

Signature  18/17
[Bikki Raveendra Babu, Member (J)]

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