

**IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH
KOLKATA**

CP (IB) No.704/KB/2017

Coram: Shri Jinan K.R, Hon'ble Member (Judicial)

In the matter of:

An application to initiate Corporate Insolvency Resolution Process 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:

GANDHAR OIL REFINERY (INDIA) LIMITED, a Company incorporated under the provisions of the Companies Act, 1956 and being a Company within the meaning of the Companies Act, 2013 having its Registered Office at DLH Park, 18th Floor, S.V. Road, Goregaon West, Mumbai 400 062, in the state of Maharashtra within the aforesaid jurisdiction.

.....Operational Creditor

And

In the matter of:

ANKIT METAL AND POWER LIMITED, A Company incorporated under the provisions of the Companies Act, 1956 and being a Company within the meaning of the Companies Act, 2013 having its Registered Office at 35, Chittaranjan Avenue, Kolkata 700 012, in the state of West Bengal within the aforesaid jurisdiction.

.....Corporate Debtor

Judgement / Order delivered on 14th February 2018.

Counsel on Record for the Applicants:

For the Operational Creditor: 1. Shri Ajay Gaggar, Advocate
: 2. Ms. Rakhi Purnima Paul, Advocate

For the Corporate Debtor : Ms. Ishani Sengupta, Advocate

ORDER

Per Shri Jinan K.R, Member (J):

1. The petitioner has filed this application under Sec.9 of the Insolvency & Bankruptcy Code, 2016 (hereinafter referred to as I & B Code) 2016 read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 (hereinafter referred to Adjudicating Authority Rules, 2016) for initiation of Corporate Insolvency Process against Corporate Debtor Ankit Metal & Power Ltd.

Brief facts of the case are the following: -

2. The applicant Operational Creditor is Gandhar Oil Refinery(India) Ltd., whose identification No. is U23200MH1992PLCO68905 and having its registered office at DLH Park,18th Floor, S.V Road, Goregaon West Mumbai 400 062 in the state of Maharashtra. The Corporate debtor is M/s Ankit Metal & Power Ltd. whose identification No. Is L27101WB2002PLC094979 having its registered office at 35, Chittaranjan Avenue, Kolkata-700012 in the state of West Bengal.

3. The petitioner has stated that on account of supply of coal to the corporate Debtor between May 2015 and December 2015 the debt is due under various purchase orders placed with M/s Ankit Metals and Power Limited.

4. The operational creditor has stated that the Corporate Debtor made default in the payment of Rs.3,40,55,686/- (Rupees Three Crores Forty Lakhs Fifty-five Thousands Six Hundred Eighty-six only) The details of

date of default is given in worksheet attached & marked as 'Annexure-I'.

5. The operational creditor has stated that the corporate debtor was to make payment to the operational creditor the legitimate dues of the Operational Creditor of Rs.2,24,31,283.45/- along with interest @ 24% per annum being Rs.1,16,24,402.80 total amounting to Rs.3,40,55,686/-.

6. Under the said purchase order/contract the operational creditor had commenced the Supplying of Coal to the corporate Debtor.

7. The operational creditor has further stated that as per terms of the said contract/agreement, the petitioner had been raising invoices from time to time and the respondent corporate debtor was making part payment of the said invoices. The respondent corporate debtor has defaulted in making payment of the operational creditor for the goods supplied even after taking delivery of the goods in a proper condition without raising any dispute in any manner whatsoever and howsoever. Operational creditor by their several correspondences called upon the respondent corporate debtor to make payment of the outstanding dues. However, in spite of the repeated request, the corporate debtor did not clear off the balance payment of the invoices raised by the operational creditor and thereby causing great hardship to the operational creditor.

8. The operational creditor has further stated that it raised invoices amounting to Rs.2,24,31,283.45 excluding interest @ 24% for the supply of coal by Gandhar Oil & Refinery India Ltd (GORIL) between May 2015 and December 2015. Since payments were not forthcoming,

the operational creditor was further unable to continue the supply of coal.

9. The operational creditor has further stated that although the operational creditor made the complete supply of Indonesian steam Coal to the corporate debtor, but he neglected to make the payment against stage-wise bills raised by the operational creditor.

10. The operational creditor has further stated that the corporate debtor did not pay the outstanding dues in spite of receiving demand notice dated 27/10/2017. A copy of the demand notice is annexed with the application as Annexure F. The petitioner has stated that total outstanding dues in the notice was Rs. 3,40,55,686 occurred between May 2015 to Dec 2015. A copy of the statement of account from Bank/Financial Institutions showing the due is annexed with the application and marked as Annexure M.

11. Even after receipt of the demand notice, the corporate debtor failed to make payment the outstanding dues. Thus, the petition was filed for initiation of corporate insolvency process against the corporate debtor.

12. The petitioner has annexed along with the petition copy of the agreement dated 10/6/2012 in support of its claim; reminders sent by operational creditor to the corporate debtor; statement of account Annexure M; demand notice issued under I & B Code, 2016 on 27.10.2017 Annexure F; copy of various Purchase Order/Contract Annexure J and statement of account where deposits are made or credits normally received by the operational creditor Annexure N.

13. The petitioner has also stated that Mr Abhishek Baragra, Manager (Legal) has been authorized to act on behalf of the operational creditor. In support of its contention, the petitioner has also filed an affidavit. Petitioner has also submitted the authorization letter which shows that the petitioner company by its resolution dated 16/10/2017 had authorized Mr. Abhishek Baragra, Manager (Legal), to sign, verify, appoint advocate, institute the petition or/execution case, give written statement and complaints, sign affidavits, replies, evidence on behalf of the company with the appropriate Court of law having jurisdiction on behalf of the applicant company.

14. The applicant / operational creditor has delivered demand notice of unpaid operational debt/copy of Invoices on 28th October 2017 to Corporate Debtor in prescribed manner as specified in Rule 5(2) of Insolvency and Bankruptcy (Application to Adjudicating Authorities) Rules, 2016 under Section 8(1) of the Insolvency and Bankruptcy Code, 2016 vide **Annexure-'D'**. Further, the petitioner has enclosed the proof of service of Demand Notice vide **Annexure-'G'**, which indicates that the demand notice was duly served upon Corporate Debtor on 28.10.2017 vide Track Consignment Report which is on page 59 of the petition.

15. The operational creditor has also filed an affidavit to the effect that the corporate debtor in its reply dated 08.11.2017 disputed the claim. The applicant has further stated that corporate debtor has failed to bring to the notice of the operational creditor an existence of a dispute or the pendency of the suit or arbitration proceedings filed before the service of the demand notice. The operational creditor has further

alleged that even ten days after the date of delivery of the demand notice, he has not received any payment regarding the pending amount from the corporate debtor.

16. The Operational Creditor in order to admit the application filed under Section 9 of the Insolvency Bankruptcy Code, 2016 relied on the purchase orders and the invoices annexed to the application which clearly reflects that the goods were supplied to the Corporate Debtor without any demurer and the Corporate Debtor has not only taken delivery of goods in good and proper condition but have also consumed the goods.

17. The Operational Creditor also filed the tabular statement being Annexure I, which contains the details of the principal amount Rs. 2,24,31,283.45/- along with interest Rs, 1,16,24,402.80, both totaling to Rs. 3,40,55,686/- (Rupees Three Crores Forty Lakhs Fiftyfive Thousands Six hundred eightysix only).

18. That the Operational Creditor has pointed out that the interest has been charged at the rate of 24% per annum which is the term mentioned in the invoice whereby any delay caused by the Corporate Debtor in making any payment of the invoice amount, shall attract the interest @ 24 % per annum.

19. The corporate debtor has filed reply contending in brief is the following: -

1. That there are preexisting disputes between the Operational Creditor and the Corporate Debtor within the meaning of Section 5(6) of the Insolvency and Bankruptcy Code, 2016.

2. The Corporate Debtor is a listed company which is engaged in the business of iron and steel and owns an Integrated Steel Plant with a capacity of production of Sponge Iron, Steel Melting Shop, Billets and Rolling Mill along with 12.5 MW Captive Power Plant. In the usual course of business, sometime between 2013 and 2015, the Corporate Debtor had placed around 17 (seventeen) purchase orders for the purchase of Indonesian coal from the Operational Creditor because coal being an important source of captive power generation in the plant of the Corporate Debtor. However, there was a short supply by the Operational Creditor of around 11,550 metric tons of coal. Accordingly, the Corporate Debtor suffered due to not being able to utilize 11,550 metric tons. The Corporate Debtor would have generated 10454000 units (equivalent to 10454 KW) of electricity using such 11,550 metric tons of coal at a cost of Rs. 4/- per unit. However, due to the short supply of coal by the Operational Creditor, the Corporate Debtor had to purchase electricity from the grid of West Bengal State Electricity Supply Distribution Company Limited at a cost of Rs. 6/- per unit. Such differential cost of Rs. 2/- per unit for 0454000 units of electricity has resulted in a loss of Rs. 2,09,09,090/- to the Corporate Debtor.
3. It is further stated that the Operational Creditor had also represented to the Corporate Debtor that its wholly owned subsidiary of Gandhar Global Singapore Pvt. Limited, a company incorporated in Singapore is also engaged in the business of sale of coal and requested the Corporate Debtor to procure coal from such entity as well.

4. In or about April 2015, a contract dated 10th April 2015 was entered between Gandhar Global Singapore Pvt. Limited (hereinafter referred to as the 'subsidiary company') where under the said subsidiary company of the Operational Creditor was required to supply to the Corporate Debtor around 15,000 metric tons of coal at Haldia Port. The contract contained the clear specifications as to the quality and quantity of coal required by the Corporate Debtor.
5. When the coal was unloaded at Haldia, and the consignment was inspected through Mitra S.K, a third-party inspection agency, it was found that the coal supplied was of much inferior quality and that the quality of the coal did not meet the required standard. Therefore, the entire consignment was liable to be rejected as the same did not match the requirements of the Corporate Debtor. This was immediately intimated to the Operational Creditor as well its subsidiary through email dated June 4, 2015. Copy of the email is annexed at Page 25 of the application of the Operational Creditor, and a copy of the inspection report is added at Page 34 of the reply of the Corporate Debtor.
6. Since the material received was of inferior quality and not by the specifications, after prolonged discussions, it was agreed between the Operational Creditor, i.e. the 100% holding company of Gangadhar Global Singapore Pvt. Limited and the Corporate Debtor that the consignment sold by the

subsidiary company would be accepted at a lower rate than the value for which it was sold, i.e. \$40 per metric ton instead of \$70 per metric ton as stipulated in the contract dated 10th April 2015. Therefore, the Operational Creditor took upon itself the liability of its subsidiary and such liability stood assigned to the Operational Creditor. While such discussions and negotiations were going on between the parties, the coal was stored at a dumping yard at Haldia Port for which the Corporate Debtor was liable to pay rental charges every month which had to be borne by them for nearly five months. Upon the agreement being arrived at, as mentioned aforesaid, the Corporate Debtor accordingly raised a debit note of Rs. 34,50,000/- to the account of the Operational Creditor on account of such rental charges which had to be borne by the Corporate Debtor due to no fault of its own. The Operational Creditor was liable to adjust the price of 15,000 metric tons of coal calculated @ \$40 per metric ton and the additional charges of Rs. 34,50,000/- in the account of the Corporate Debtor as maintained by the Operational Creditor by October 2016 and thereby the entire disputes arising out of the defective and inferior quality of goods supplied by the subsidiary company, would be fully settled.

7. Accordingly, the Corporate Debtor made necessary entries in its accounts ledger pertaining to the Operational Creditor's account and thereafter, a sum of Rs. 1,87,15,745.20 remained to the credit of and due on the Corporate Debtor from the Operational Creditor. Copy of the accounts ledger of the

Corporate Debtor about the Operational Creditor is annexed at pages 42 to 46 of the reply of the Corporate Debtor.

8. The Corporate Debtor was always under a bona fide belief and impression that the aforesaid agreement as arrived at to resolve the disputes relating to the inferior coal supplied by the Operational Creditor have been entirely acted upon and the said disputes have been finally settled. At no point of time, any demand was raised by the Operational Creditor claiming any amount as due on account of supplies made by the Operational Creditor before the insolvency notice dated 19th July 2017 referred to in the said insolvency application.
9. The Corporate Debtor from the notice dated 19th July 2017 came to learn that the Operational Creditor has only adjusted a sum of Rs. 90,31,549.80/- against the Corporate Debtor's account on 31st October 2016 due to the defective supply of goods by its subsidiary company but has failed and neglected to adjust the remaining sum of Rs. 2,07,42,790.20/- as well as the sum of Rs. 34,50,000/- for which a debit note was raised, and which was also agreed to be adjusted. The Corporate Debtor is not aware of the basis or reasons based on which only a partial adjustment of 3,412.5 metric tons @ \$40 per metric ton has been given without adjusting the value of the remaining quantity but even by reasons of such partial adjustment, the Operational Creditor has admitted, acknowledged and accepted its liability on account of the defective supply by its subsidiary company and thus has adjusted the debt due by its subsidiary to the Corporate Debtor

in its own account and therefore is bound to account for its liability to the Corporate Debtor for the remaining quantity of coal and Rs. 34,50,000/- on account of rental charges borne by the Corporate Debtor.

10. In fact, the Operational Creditor has written off the entire sum which it had claimed from the Corporate Debtor in its books of accounts as on 31st March 2017 accepting its liability as aforesaid and the amount due from the Corporate Debtor to the Operational Creditor has been shown as nil. The invoices based on which the Operational Creditor had issued the insolvency notice has been written off in the books of the Operational Creditor.
11. Copy of the ledger of the Operational Creditor is annexed at pages 96 to 97 of the insolvency application. This is the accounts of the Operational Creditor itself, which has been relied upon in the insolvency application and its notice.
12. In the circumstances, it is clear that the Corporate Debtor is not at all liable to pay the Operational Creditor a sum of Rs. 2,24,31,283.45/- let alone interest at the rate of 24% per annum on such alleged dues or any part thereof. On the contrary, the Operational Creditor is liable to pay a sum of Rs. 1,87,15,745.20/- to the Corporate Debtor on account of the defective supply by the Operational Creditor's subsidiary for which the Operational Creditor has assumed responsibility and liability and the Operational Creditor is also liable to reimburse the Corporate Debtor to the tune of Rs.2,09,09,090/- as

damages. The Corporate Debtor also stated that the Notice of Dispute had been issued by the Corporate Debtor.

13. As the claims of the Operational Creditor were thoroughly disputed, the Corporate Debtor at all times had replied to each of the demand notices of the Operational Creditor issued under Section 8 of the Insolvency and Bankruptcy Code, 2016 and has raised disputes in such replies.
14. The Operational Creditor in its affidavit under Section 9(3)(b) of the Insolvency and Bankruptcy Code, 2016 has also acknowledged the existence of a dispute and has filed an affidavit to that effect. Upon the above said contention, the Corporate Debtor prays for rejection of this Petition.
15. Heard the arguments of both the parties at length and perused the records. Upon hearing the arguments and considering the contentions raised by the parties, the point that arises for consideration is the following: -

Whether the respondent succeeded in proving the existence of a genuine dispute as alleged in the reply of the Corporate Debtor?

The Point

16. Operational Creditor has filed the copy of the demand notice which is Annexure-D, page 16 to page 19 of the petition, which shows that the demand notice was issued against the Corporate Debtor on 19th July 2017 along with the Annexures containing the details of the invoices and payment due against them.

17. It also appears that Corporate Debtor received the demand notice dated 16th July 2017 twice and send reply dated 10.08.2017 on receipt of demand notice on 3rd August 2017. In response to the demand notice, the Corporate Debtor has stated explicitly that demand notice issued against him is denied and disputed. It is further noted in the reply that the claim raised in the demand notice should be set off from the due against Gandhar Singapore Private Ltd. to Ankit Metal Private Ltd. tantamount to approximately Rs.3 to Rs.4 crores.

18. It is further stated that operational creditor has adjusted certain part of alleged dues against Corporate Debtors' accounts as kept by Gandhar Singapore Private Ltd. The same shows that both are under the controlling and financial interest of the same company. Copy of the statement of accounts maintained by Gandhar Singapore Private Ltd. is annexed with the Reply as R-3 by the Corporate Debtor.

19. It is further stated in the reply that the impugned notice under Form 3 of the Code is not as per law, thus it will be presumed that that no notice under Form 4 has been served.

20. Corporate Debtor has further denied and disputed the debt payable against him and has alleged that invoices which have been received contain a false claim to pressurize the Corporate Debtor. It is further alleged that due to defective materials, Corporate Debtor has suffered substantial financial loss to the business.

21. It also appears from the record that after receiving the second demand notice, the Corporate Debtor has again sent a reply on 8th

November 2017 wherein it is stated that certain disputes were raised about quality of the material. A third-party Inspection Agency carries out a Sampling & Analysis. It is further stated in the reply that the alleged dues raised against invoices should be set off from the dues against Gandhar Singapore Private Ltd. to Ankit Metal Private Ltd. which tantamount to approximately Rs.3 to Rs.4 crores.

22. The Ld. Counsel for the Corporate Debtor has emphasised on the ledger entry of Gandhar Oil Refinery Ltd. which is at page no.96 and 97 of the petition, which shows that adjustment of Rs.90,31,549.80 paise was allowed by Operational Creditor on account of quality compensation against sales bill nos.1000000084 to 11000000975.

23. Ld. Counsel for the Corporate Debtor has further emphasized the ledger entry of Gandhar Refinery India Ltd., which is at page no.97 of the petition. Ledger entry of this page shows the following:

Sub Ledger (LC)	Debits	Credits	Balance
ANKIT METAL & POWER LTD. -Amount not Recoverable Agent. Sales Bill No.TRD-INV-K.1100000009 to 1100000058 dated 14-May 15 to 09-Nov-15 Transfer to Bad Debts A/c.	11,933,986.00	00

24. By the above entry, the argument has been raised by the Ld. Counsel for the Corporate Debtor that amount relating to invoice no. 09 to 58 has been adjusted, and balance shown in the ledger is Nil. Ld. Counsel for the Corporate Debtor has further submitted that on account of sub-standard quality, adjustment of Rs.90,31,549.80 was allowed

and no balance due is showing in the ledger book of the Operational Creditor.

25. Ld. Counsel for the Operational Creditor has stated that due to accounting practice, balance amount has been transferred to bad debt a/c. Therefore, the balance amount is being shown in the Ledger as Nil. It is clear that the amount due against subsidiary company Gandhar Singapore Private Ltd, cannot be adjusted in the account of the Operational Creditor. On the basis of ledger entry, it is clear that some amount due against the subsidiary company has been adjusted from the account of the Holding Company i.e. Operational Creditor. By giving one credit adjustment of subsidiary company by its holding does not mean that liability of subsidiary company will be deemed to be liability of holding company. Legally holding and subsidiary companies are separate entities therefore if there was any existing dispute with subsidiary company then it will have no effect on the Holding company and it can't be treated as existing dispute with holding company.

26. In case of Mobilox Innovations Private Ltd. -vs- Kirusa Software Pvt. Ltd. 2017 SCC Online Supreme Court page 1154, Hon'ble Supreme Court has laid down the law that *"once the Operational Creditor has filed an application, which is otherwise complete, the Adjudicating Authority must reject the application under section 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 defense which is a mere bluster. However,*

in doing so, the Court does not need to be satisfied that the defense is likely to succeed."

27. In this case, after receiving the demand notice, the Corporate Debtor has raised a dispute. Ld. Counsel for the corporate debtor also emphasized on the ledger entry which has been filed by the Operational Creditor, which shows that on account of deficiency in service, Corporate Debtor has allowed adjustment of Rs.90,31,549.80, though this amount relates to sub-standard supply by a subsidiary company. In reply to the demand notice corporate debtor has stated in para v. that

"In regards to the due as claimed ,such should be set off from the due against Gandhar Singapore Pvt. Ltd to Ankit Metal Pvt Ltd which tantamount to approximately between Rs 3,00,00,000 to Rs 4,00,00,000, the exact due is well known to you and your Singapore Company. Further, as you have adjusted certain part of your alleged due against our accounts as kept by Gandhar Singapore Pte. Ltd., the same shows both are under the controlling and financial interest of the same entity. Copy of the statement of accounts maintained for Gandhar Singapore Pte. Ltd. Has been annexed herein and marked as "R-3".

28. According to the Operational Creditor it has a subsidiary company which is incorporated and based at Singapore. Admittedly the Subsidiary Company has also supplied the goods to the Corporate Debtor from time to time. Ld. Counsel for the operational creditor submits that the Subsidiary Company is a separate and a distinct entity in the eyes of the law and it cannot be treated as the same company as the Operational Creditor. In this regard, he relied on the judgment of Indowind Energy Limited vs Wescare (India) Limited and Anr [(2010) 5 Supreme Court Cases 306].

29. The dispute raised by the Corporate Debtor in its reply is a claim against the subsidiary company for the supply of substandard goods to the tune of Rs. 90,31,549.80/-. The said claim has been accepted by the subsidiary company, and under their instruction, this claim amount has been duly adjusted and given credit off against the amount due and payable to the operational creditor. This credit to the corporate debtor can also be observed from the ledger account being Annexure I duly annexed to the application.

30. According to the learned Counsel for the operational creditor, though the operational creditor is not liable for any claim being raised by the Corporate Debtor against any other entity even it is a subsidiary company of the operational creditor in this case after due instructions from the subsidiary company the claim amount of the Corporate debtor has been given a due credit off. I find some force in the argument advanced on the side of the Operational Creditor. No doubt the operational creditor has no contractual liabilities to adjust any claim of the subsidiary company. Moreover, only because it adjusted the claim from the amount due to it from the corporate debtor doesn't indicate that operational creditor adjusted the above said claim because the operational creditor is legally bound by the transaction between the subsidiary company of the operational creditor and the corporate debtor.

31. Therefore, the demand of Rs.90,31,549.80 as raised by the Corporate Debtor against the subsidiary company towards supply of sub-standard goods and for which the Corporate Debtor has also raised a demand notice and has not been duly accounted for and / or given credit by the Operational Creditor under instruction from its subsidiary company is evident from the books of accounts. This can also

be reflected from the ledger account being at page 96 and marked as Annexure I wherein it is shown that the legitimate claim as raised by the Corporate Debtor has been given due credit by the Operational Creditor under the instruction of its subsidiary company.

32. Further, the Corporate Debtor has allegedly claimed an amount varying from Rs.3 to Rs. 4 Crores against the subsidiary company in its reply. In this regard, the Operational Creditor pointed out that the claim made by the Corporate Debtor is entirely arbitrary. If at all the corporate debtor had any claim it should have been specific, and the corporate debtor would have raised a debit note as it has done in the past. Therefore, this alleged claim is nothing but frivolous and baseless.

33. The ledger account of the Corporate Debtor in the books of the Operational Creditor (Page 96 at Annexure I) shows the amount as "Nil". This is because after giving due credit of the legitimate claim of the Corporate Debtor the recoverable balance amount from the Corporate Debtor has been transferred to the bad debt account. The Operational Creditor maintains an accounting policy of transferring any outstanding debt of more than one year not recovered to be transferred to the bad debt account. This does not under any circumstances mean that the Corporate Debtor is not liable to make payment of the legitimate dues of the Operational Creditor and shy away from its obligation. Under no circumstances, the Corporate Debtor can take shelter of the accounting entries to wriggle out of its commitments for making payment of the legitimate dues of the Operational Creditor

34. The Corporate Debtor raised one another contention that once an obligation has discharged by the Operational Creditor on behalf of the subsidiary company it is bound to discharge the other obligation of its subsidiaries. This proposition is not correct. As stated above the subsidiary Company of the Operational Creditor is a separate and distinct legal entity, and the claim of the subsidiary company under no circumstances can be claimed from the principal company.

35. In any case, there are no legitimate claims against the subsidiary company and the only legitimate claim so demanded by the Corporate Debtor of Rs. 90, 31,549.80 has been duly accounted for, and the necessary credit has been given to the Corporate Debtor. The corporate debtor in its reply to the demand notice has not in any manner claimed any further amount from the operational creditor save and except the debit not of Rs.90,31,549.80/- which has been duly accepted by the subsidiary company and adjusted against the dues of the operational creditor while claiming its legitimate dues. No supporting evidence produced to prove that before the receipt of the demand notice the corporate debtor raised any dispute regarding the amount claimed by the operational creditor. No documents in support of claim of Rs.1,87,15,745.20 as demanded by the corporate debtor in its reply also produced in this case. No evidence also available to prove existence of any agreement for adjustment of the amount found due to the operational creditor.

36. From the above said discussion I can come to a right conclusion that the corporate debtor failed to establish existence of a dispute falls within the purview of section 5(6) of the I&B, Code. So also the

corporate debtor failed in proving existence of dispute as held in the Mobilox Innovations Private Limited case cited above. The claim made by the operational creditor is not at all hit by section 9(5) (ii) (d) of the I&B, Code as contended on the side of the corporate debtor. The application filed under section 9 of I&B, code on the other hand is complete. There is no repayment of the unpaid operational debt. No insolvency professional is proposed by the operational creditor. Hence compliance of section 9(5) (2) (e) doesn't arise.

37. In view of the foregoing facts and circumstances, it appears to me that this application filed under section 9 of the I&B, Code is liable to be admitted. Accordingly admitted upon the following directions: -

(1) Moratorium under section 14 of Insolvency & Bankruptcy Code shall apply.

(a) The institution of suits or continuation of pending suits or proceedings against the corporate debtor including execution of any judgment, decree or order in any court of law, tribunal, arbitration panel or other authority;

(b) Transferring, encumbering, alienating or disposing of by the 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 corporate debtor in respect of its property including any action under the Securitization 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 possession of the corporate debtor.

(2) The supply of essential goods or services to the corporate debtor as may be specified shall not be terminated or suspended or interrupted during the moratorium period.

(3) The provisions of sub-section (1) shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.

(4) The order of moratorium shall affect the date of admission till the completion of the corporate insolvency resolution process.

38. Provided that where at any time during the corporate insolvency resolution process period, if the Adjudicating Authority approves the resolution plan under sub-section (1) of section 31 or passes an order for liquidation of corporate debtor under section 33, the moratorium shall cease to have effect from the date of such approval or liquidation order."

39. Mrs. Savita Agarwal, Reg.No IBBI/IPA-001/IP-P00101/2016-17/10201, E-mail-savita_22@hotmail.com, Mob.No.9831634214 is hereby appointed as an Interim Resolution Professional.

40. Registry is directed to issue communication forthwith to the above referred IRP by way email

41. Necessary public announcement as per section 15 of the I & B Code, 2016 may be made by the IRP upon appointing the resolution professionals IRP. Let the copy of the order be sent to the Applicant/Operational Creditor as well as Corporate Debtor and I.R.P.

42. Urgent Photostat certified copies of this Order, if applied for, be supplied to parties upon compliance of all requisite formalities. Registry is directed communicate the order forthwith to the applicant and corporate debtor and insolvency professional by way of E-mail and post.

List it on 07.03.2018 for filing report.

Sd

(Jinan K.R.)
Member (Judicial)

Signed on 14th day of February 2018.

PS_Aloke