

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

C.P. (I.B) No. 24/9/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 02.06.2017**

Name of the Company: Capital Partners
V/s.
Reliance Defence & Engineering Ltd.

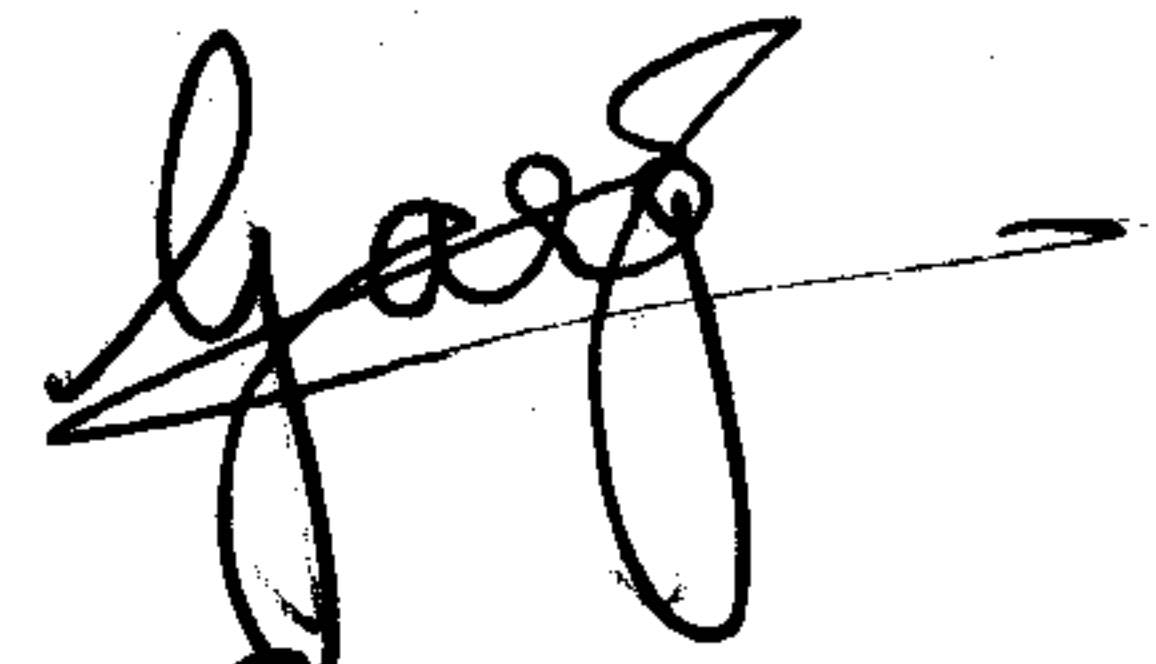
Section of the Companies Act: Section 9 of the Insolvency and Bankruptcy
Code

<u>S.NO.</u>	<u>NAME (CAPITAL LETTERS)</u>	<u>DESIGNATION</u>	<u>REPRESENTATION</u>	<u>SIGNATURE</u>
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1. GARGI R. VYAS

ADVOCATE

APPLICANT



2. Jaimin R. Dave

Advocate

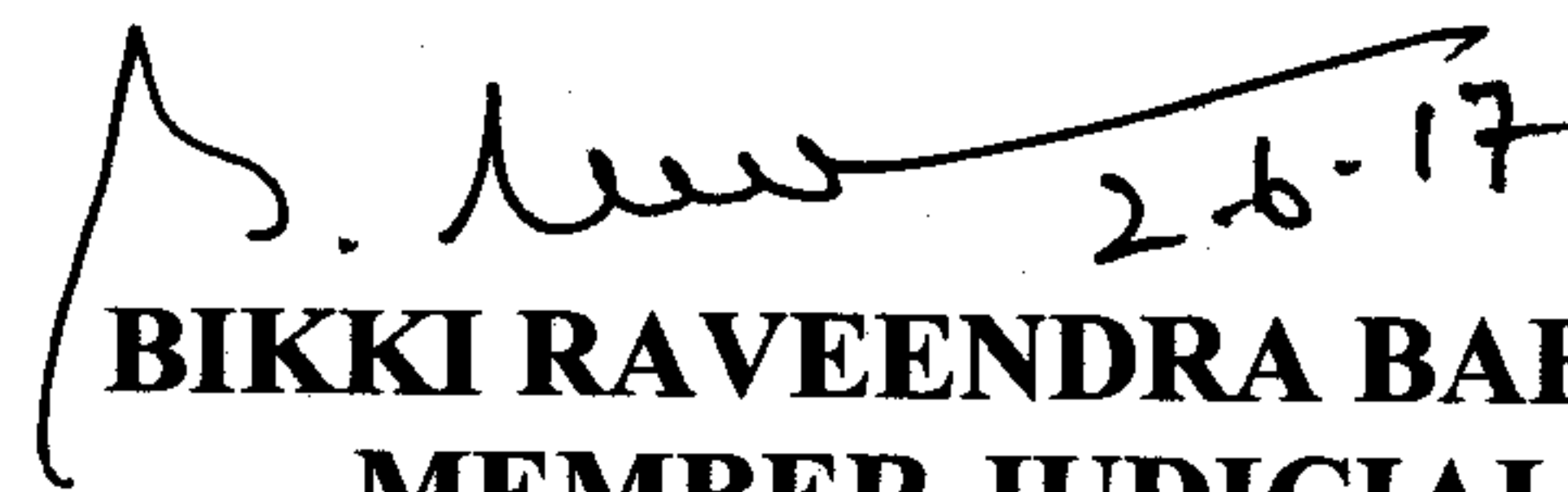
Respondent



ORDER

Learned Advocate Ms. Gargi Vyas present for Petitioner/ Operational Creditor.
Learned Advocate Mr. Jaimin Dave present for Respondent/ Corporate Debtor.

Order pronounced in open Court. Vide separate sheet.


**BIKKI RAVEENDRA BABU
MEMBER JUDICIAL**

Dated this the 2nd day of June, 2017.

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

CP NO. (IB) 24/9/NCLT/AHM/2017

CORAM: SRI BIKKI RAVEENDRA BABU, MEMBER JUDICIAL

Date: 2nd day of June, 2017

In the matter of:

1. M/s. Capital Partners
(through its partner Mr. Sunil Tandon)
901 Gabbana House, 15th Road
Khar (West)
Mumbai 400 052 : Petitioner
: Operational Creditor

VERSUS

Reliance Defence and Engineering
Ltd. (earlier known as Pipavav
Defence and Engineering Company Ltd.)
Pipavav Shipyard Limited Pipavav
Port, Post Uchaya, Via. Rajula, Rajula
Gujarat 365 560 : Respondent
: Corporate Debtor

Appearance:

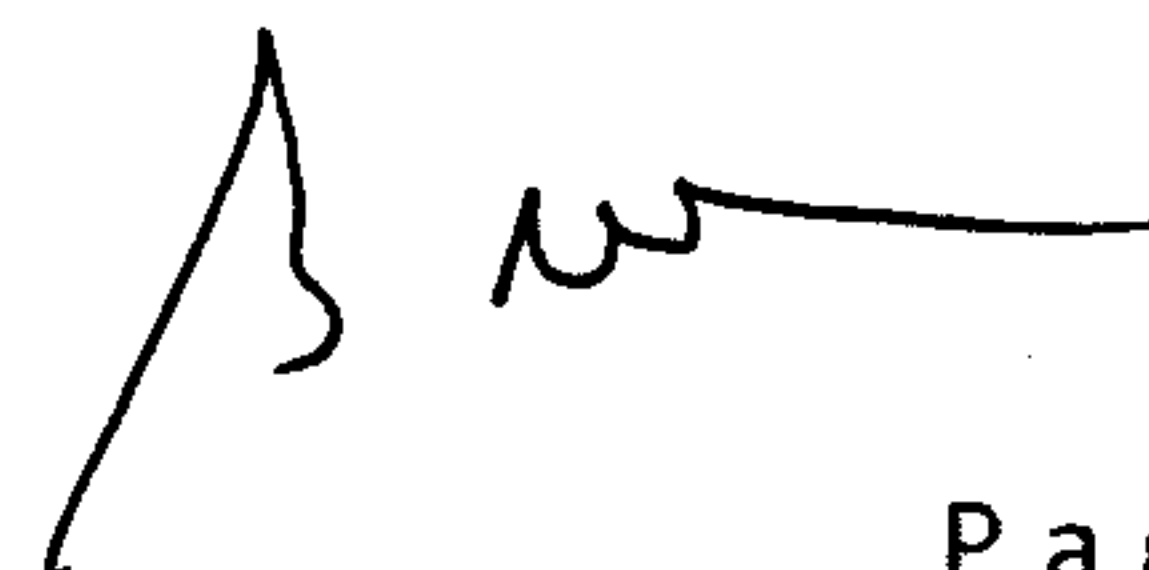
1. Learned advocate Mr. Navin Pahwa with learned
advocate Ms. Gargi Vyas present for Operational
Creditor/Petitioner.
2. Learned Sr. Advocate Mr. Dhaval Dave and learned
advocate Mr. Jaimin Dave Ashish present for
Corporate Debtor/Respondent



FINAL ORDER
Dated: 02 -06-2017

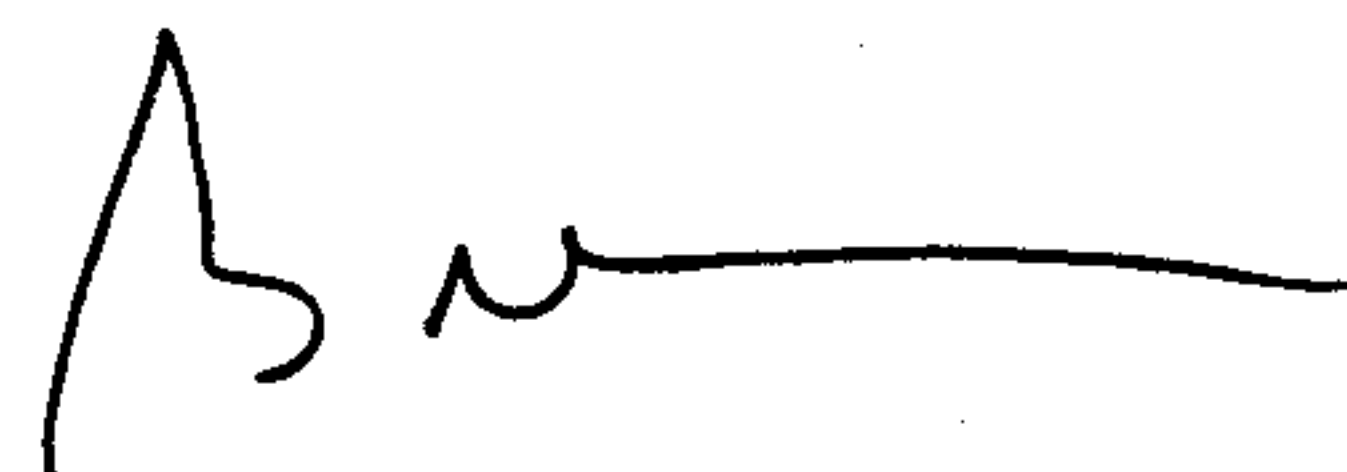
1. M/s. Capital Partners filed this petition under section 9 of The Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as "the Code") read with Rule 4 of The Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 (hereinafter referred to as "the Rules") seeking reliefs under Section 9 and 13 of the Code.

2. It is the case of the petitioner that, M/s. Capital Partners was engaged as advisor by the respondent company (then Pipavav Defence and Offshore Engineering Company Ltd.) on the terms and conditions as contained under the contract dated 30th November, 2011. The said contract was amended on 1st December, 2011 and again on 1st May, 2012 respectively. The scope of the services as set forth in the contract was required to be performed solely by Mr. Sunil Tandon being a partner of M/s. Capital Partners. Duration of the contract was for a period of five years with effect from 1st December, 2011. As per the contract dated 30.11.2011 the respondent company was required to pay advisory fees of Rs. 1.00 crore per annum to M/s. Capital Partners. As per the agreement dated 01.12.2011, M/s. Capital Partners was entitled to a bonus of Rs. 1.00 crore and upon successful implementation of the initiative, M/s. Capital Partners is entitled for bonus of Rs. 1.00 crore. As per the amended contract dated 01.05.2012, Mr. Sunil Tandon was designated as a Principal Advisor and

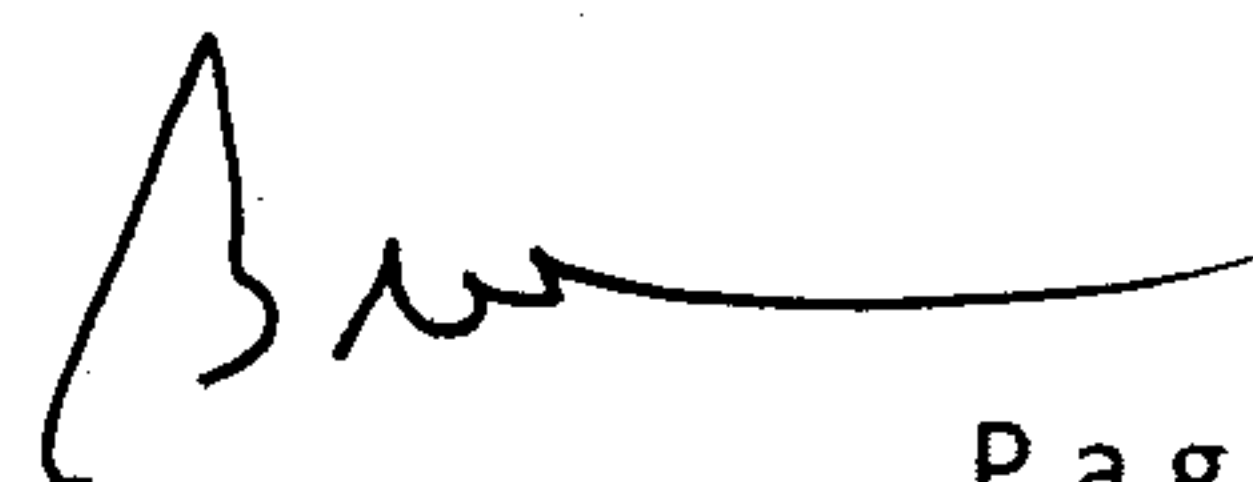


monthly fee was increased to Rs. 13.00 lacs and M/s. Capital Partners were entitled for a fee of Rs. 2.00 crores on completion of the BCG assignment. It was further agreed upon between the parties that, in case of a conflict in the terms and conditions as envisaged in the letter dated 01.05.2012 shall prevail.

3. According to the petitioner, in June 2012 the BCG was successfully completed and as per letter dated 01.05.2012 the respondent company was obligated to pay an amount of Rs. 2.00 crores plus applicable service tax. During the period of June, 2012 till February 2015, requisite services were rendered to the company in accordance with the terms and conditions of the contract. On the request of the respondent company, although the BCG assignment was completed in June, 2012, M/s. Capital Partners did not raise any invoice. Ultimately, on 31.03.2015 invoice of Rs. 2,24,72,000/- was sent to the respondent company in respect of fees payable by the respondent company vis-à-vis BCG assignment. Invoice was received by the respondent company without any demur or protest. Mr. Sunil Tandon resigned from the company with effect from 01.07.2015 and the same was accepted by the company by its letter dated 15.06.2015. On 25.06.2015, the respondent company terminated the contract on the request of Mr. Sunil Tandon with effect from 30.06.2015. Mr. Sunil Tandon sent reminders to settle accounts of M/s. Capital Partners immediately after his resignation, by way of emails

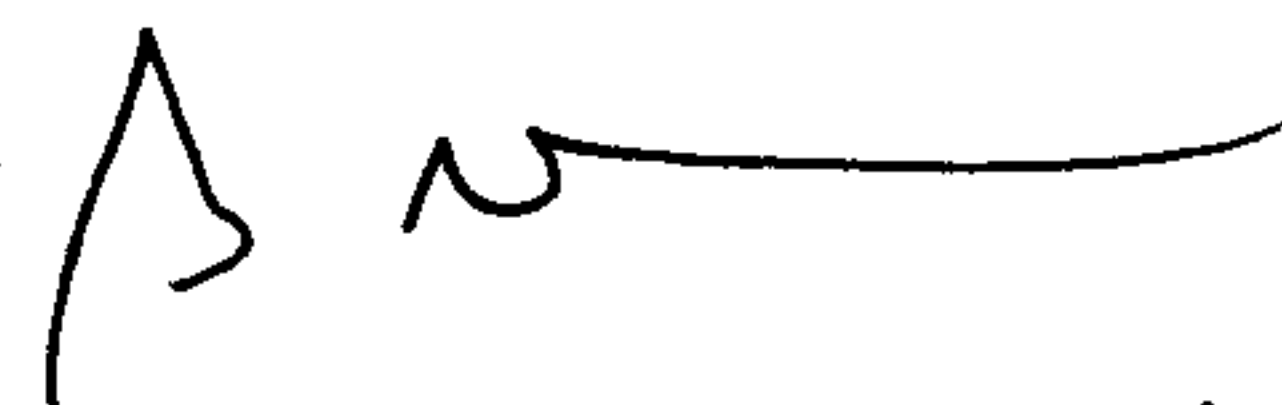


dated 28.05.2015 and 22.06.2015. The respondent company by email dated 29.06.2015 stated that the balance outstanding owed by the company till 31.05.2015 is Rs. 8,09,346/- and for the month June 2015 is Rs. 13,30,680/- and other amount payable by the company is Rs. 2,04,72,000/-. Aggregate amount payable by the respondent company to M/s. Capital Partners as on 29.06.2015 is Rs. 2,26,12,026/- only. Again, on 08.10.2015, Mr. Sunil Tandon called upon the company to make payments of the outstanding amount of Rs. 2,04,00,000/-. In fact, the amount due was Rs. 2,26,12,026/- Accordingly another email dated 08.10.2015 was sent to the company by Mr. Sunil Tandon followed by reminder email dated 12.10.2015. On 18.01.2016, Accounts & Finance Department of the respondent company handed over a copy of the ledger of the company for the period from 01.04.2015 till 18.01.2016 which clearly reflects that as on 18.01.2016 an amount of Rs. 2,26,04,778/- is payable to the petitioner by the respondent company. Thereafter also email reminders were sent by Mr. Sunil Tandon on 14.03.2016 and 09.06.2016 to CEO of the respondent company. M/s. Capital. Partners and Mr. Sunil Tandon, by way of legal notice dated 13.10.2016 through advocate called upon the company to pay the outstanding amount. On 02.11.2016, M/s. Capital Partners and Mr. Sunil Tandon forwarded relevant documents to the company. The company by letter dated 02.11.2016 denied the liability and raised ill-founded allegations. Thereafter, on 04.02.2017, M/s. Capital Partners and Mr. Sunil Tandon through advocate served demand notice on the respondent company calling upon the



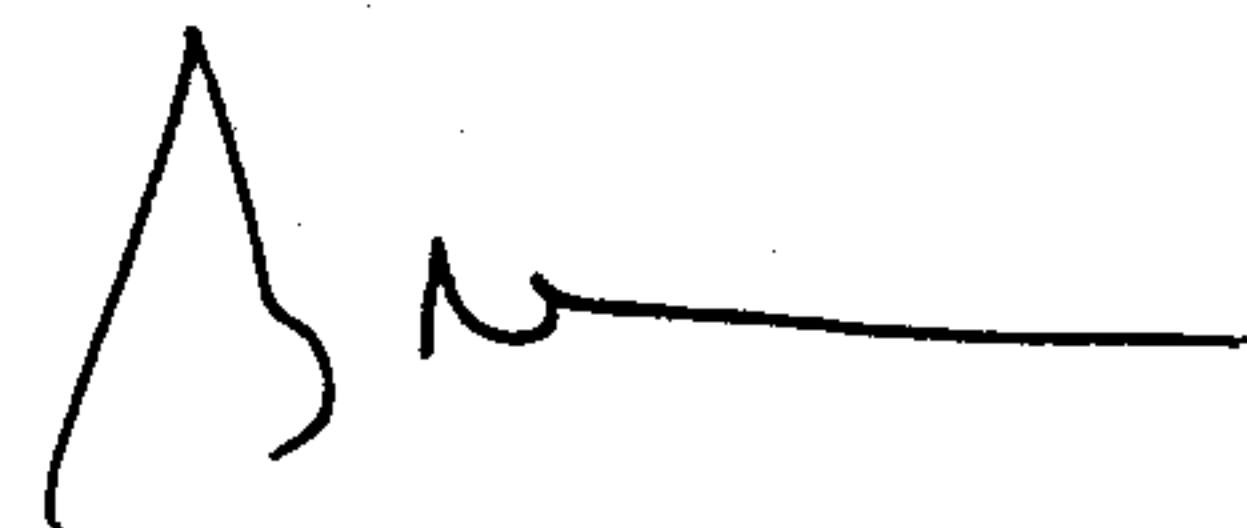
company to pay outstanding amount. The company, by reply dated 16.02.2017 styled as a notice of dispute made false allegations without substantiating the same. According to the petition, the respondent company is admittedly liable to make payment of outstanding amount but it has chosen not to make payment. Hence this petition is filed before this Tribunal on 12th May, 2015 after serving copy on the Corporate Debtor.

4. This petition is listed before this Tribunal for the first time on 16.05.2017. This Tribunal directed petitioner to issue notice to the Corporate Debtor and file proof of service. On 19.05.2017 learned counsel for respondent company requested for time to file documents. On 26.05.2017, respondent company filed reply along with documents. This Tribunal heard arguments of learned counsel for the petitioner and learned senior counsel for the respondent.
5. It is the case of the respondent that the claim is based on a stipulation in the letter dated 01.05.2012 whereby an additional fee of Rs. 2.00 crore was agreed to be made upon successful completion of the Boston Consultancy Group assignment. According to the respondent, the same stipulation has not been satisfied and therefore the claim is clearly untenable and therefore the petitioner is not entitled to additional fee of Rs. 2.00 crores as offered by letter dated 01.05.2012. Further, according to the respondent, productivity enhancement was key success factor of the project

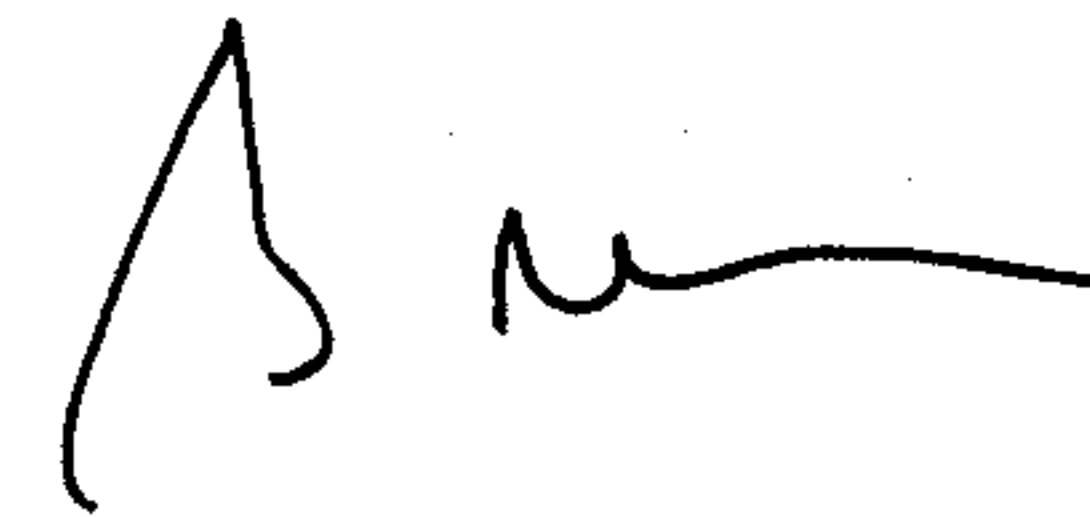


but the operations, the results recorded and the accounts of the company do not show any such improvement between the period March 2012 till March 2013. The petitioner does not establish successful completion of the Boston Consulting Group assignment.

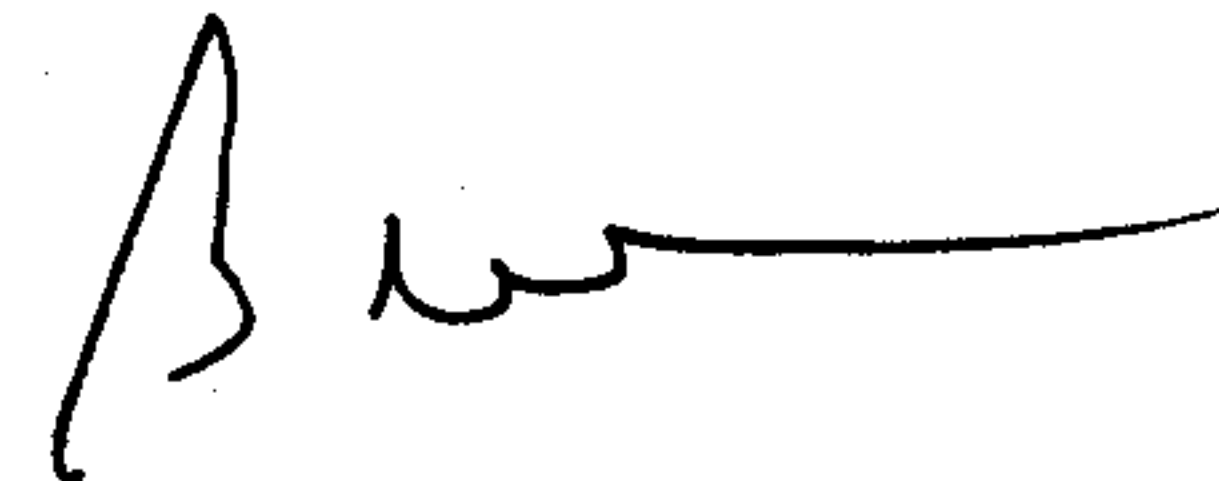
6. Respondent filed statement of accounts showing that a sum of Rs. 3,54,30,232/- is recoverable from the petitioner since 31.03.2015 with interest @ 12% per annum. It is also stated that the petitioner is illegally withholding and has been misusing the property of the company viz. a Skoda Superb Elegance Car and an air conditioner even after his resignation. It is further stated that the petitioner had incurred personal expenses on the Corporate Credit Card and has failed to deposit the same with the respondent company. The respondent company has pointed out aforesaid facts at the very first possible instance in response to statutory notice vide letter dated 02.01.2017 and 16.02.2017. Petitioner having knowledge about existence of a bona fide dispute with respect to the purported debt, with intention of arm twisting and pressurising the respondent company and extorting money from them filed this petition. Respondent company filed Special Civil Suit No. 28 of 2017 before the Civil Judge, Amreli for recovery of damages and compensation to the tune of Rs. 52,00,983/-.



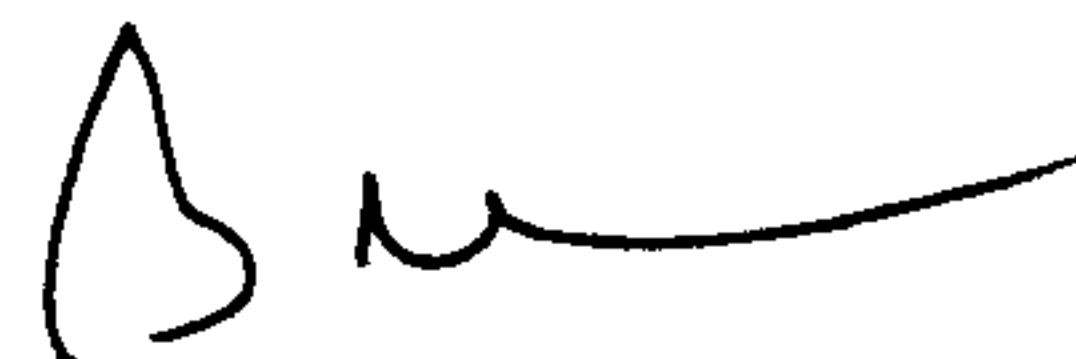
7. It is stated in the reply that in view of sub-Clause (d) of Clause (II) of Sub Section 5 of Section 9, the Adjudicating Authority is required to reject an insolvency application in case where there is a dispute. It is also stated that dispute include a suit or arbitration proceedings relating to the existence of the amount of debt, quality of goods or service or breach of a representation or warranty.
8. It is mentioned in the reply that, Hon'ble Principal Bench of National Company Law Tribunal, Delhi in case of *Annapurna Infrastructure P. Ltd. vs. Soril Infra Resources Limited* observed that *definition of the word "dispute" is not exhaustive but is, in fact illustrative*. It is further stated that, the corporate debtor would be well within his right to show that goods and services were not supplied at all or the supply was far satisfactory in case of demand raised by an operational creditor. It is further stated that, the claim is time barred as it is evident from the email of Mr. Sunil Tandon dated 22.06.2015. In that email it is stated that the amount became due in 2012 and that it has remained due for more than three years. Petitioner did not make any effort to claim the amount till 2017. Since the claim amount cannot be recovered in law, the petitioner filed the present application under Insolvency and Bankruptcy Code, 2016 with sole intention to pressurise the respondent company to pay the amount.



9. It is further stated that Mr. Sunil Tandon managed to get a statement allegedly acknowledging the debt, signed by a Jr. unauthorised employee to revive the time barred debt. Further, case of the respondent is that the company is a viable unit and has great commercial prospects. The company is a part of the Reliance Anil Dhirubhai Ambani Group and is India's largest shipbuilding and heavy industry company. Reliance group took over the respondent company from Pipavav Defence and Offshore Engineering Limited on 18.01.2016.
10. Authorised share capital of the respondent company is Rs. 1,50,00,00,00,000/-. Paid up share capital of the company is Rs. 7,362,062,690/-. Reserve and surplus of the company is Rs. 7,107,100,000/-. The respondent company is having huge capital reserve. It is unfathomable that it would not be in a position to repay an amount of Rs. 2,26,12,026/- unless there is dispute with regard to said claim. Respondent company has been awarded contract by Indian Navy for construction of five offshore Patrol Vessels with order value of around Rs. 2,975 crores and two contracts by the Indian Coast Guard for construction of cadet training vessel with order value of Rs. 221 crores. There are 2500 employees working directly or indirectly in the respondent company. The respondent company is paying its debts in ordinary course of business. According to the respondent, under these circumstances, initiating of Insolvency Proceedings will cause prejudice and irreparable harm to the respondent company. According to the

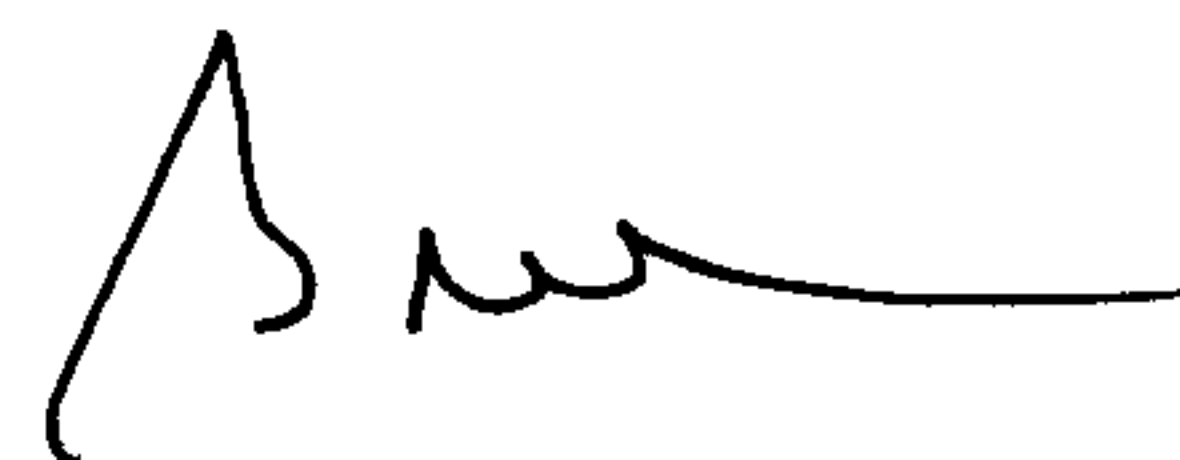


respondent there is bona fide and serious dispute regarding the purported debt. Respondent referred to the decision of Hon'ble Calcutta High Court in case of *Motilal Agarwal vz. Diabari Tea Company Ltd.* reported in [2005] 128 Comp Cases 672 (Cal). New management has not found any material which would indicate that the applicant firm or its partner Mr. Sunil Tandon has fulfilled any of its obligation under the advisory contract. New management notices that Mr. Sunil Tandon breached several terms and conditions of the advisory contract on account of which the respondent company suffered damages. Respondent has stated that there is nothing on record to suggest that BCG assignment was successfully completed in accordance with Advisory Contract dated 30.11.2011 read with letter dated 01.05.2012. Respondent company was not obligated to pay an amount of Rs. 2,00,00,000/-. Respondent has stated that letter dated 15.06.2015, 25.06.2015 and 30.06.2015 were addressed by old management of the respondent company. M/s. Capital Partners and its partner Mr. Sunil Tandon had close relation with old management of the respondent company. Old management of the respondent company had all the reasons to ensure that Mr. Sunil Tandon was able to recover the amount from the new management of respondent company. If there had been a genuine claim, the old management ought to have made payment in 2012 itself. Even according to the petitioner, the claim was due in June 2012 and, therefore, it would be recoverable till 2015 only. There is no valid authorisation to the person who sent email from the accounts department, to the petitioner. In absence



of valid authorisation, such email cannot be construed to be an email issued by the respondent company and no liability can be fastened upon the company. Ledger account produced by the petitioner vide annexure "N" is not signed by responsible officer of the company or by any officer having authority and the said documents appears to be concocted. Emails dated 14.03.2016 and 09.06.2016 are nothing but elaborate exercise undertaken by Mr. Sunil Tandon for extorting money from new management of respondent company. Notice dated 13.01.2016 issued by petitioner was completely misconceived and frivolous.

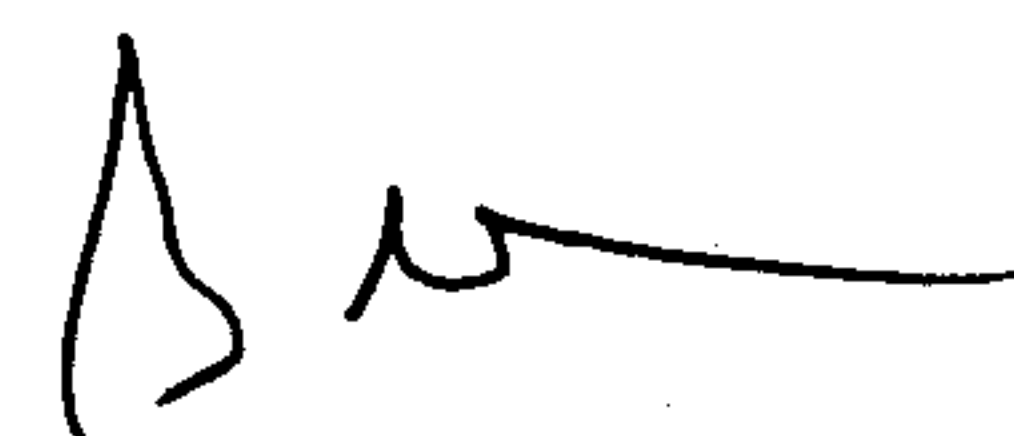
11. Learned counsel appearing for the petitioner referring to the advisory contract dated 30.11.2011 and letter dated 01.05.2012 contended that the advisory contract dated 30.11.2011 was finally amended on 01.05.2012. As per the letter dated 01.05.2012 the respondent company is liable to pay Rs. 13.00 lacs per month plus applicable service tax and Rs. 2.00 crores plus applicable service tax to M/s. Capital Partners. Learned counsel for the petitioner contended that as per mail dated 08.10.2015 an amount of Rs. 2.04 crores are due to the petitioner. Learned counsel for the petitioner pointed out that Mr. Girish Goyal, Sr. Manager Pipavav Defence and Offshore Engineering Company Limited by email dated 29.06.2016 confirmed balance outstanding amount due to the petitioner is Rs. 2,26,12,026/- as on 31.03.2015. Learned counsel for the petitioner also pointed out that as per ledger of



the corporate debtor the amount due as on 30.06.2015 is 2,11,51,346/- and as on 30.06.2016 the amount due is Rs. 2,26,33,346/-. Learned counsel for the petitioner further contended that the dispute raised by the respondent company in the reply notice dated 16.02.2017 is not at all bona fide dispute and it is raised for the first time after receipt of demand notice only to avoid payment of debt and it amounts to default. Learned counsel for the petitioner further contended that in view of the acknowledgements made by the accounts department of the respondent company and the ledger of the respondent company, the debt is not barred by limitation. Learned counsel for petitioner relied upon the following decisions: -

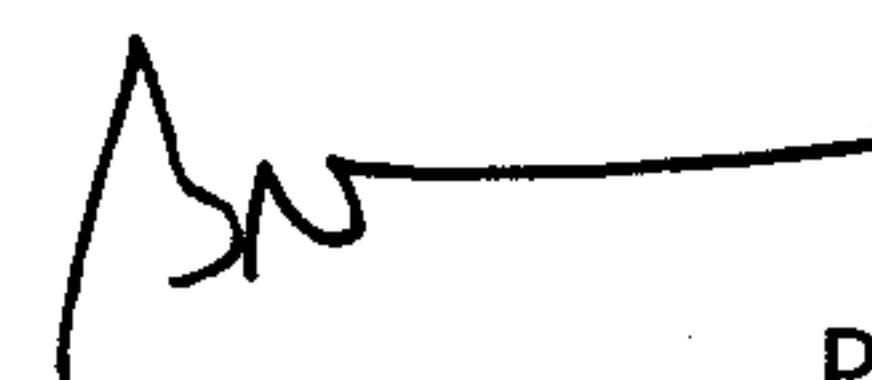
- (i) Darjeeling Commercial Co. Ltd. v/s Pandam Tea Co. Ltd. reported in [1983] 54 company cases page 814 (cal)
- (ii) Oswal Machinery Ltd. versus Pipavav Shipyard Ltd. Reported in 2012 (0) GLHEL-HC 229295
- (iii) Decisions of Hon'ble National Company Law Appellate Tribunal, Company Appeal (AT) (Insolvency) 6 of 2017 dated 24th May 2017.

 Kirusa Software Private Ltd., Vs. Mobilox Innovations Private Limited



In the first two decisions it is held that in order to invoke the jurisdiction of winding up of the company that the liability must not be barred by limitation, and the Dispute, if any, raised by debtors must be bona fide dispute.

12. Learned counsel appearing for the respondent contended that the dispute raised by respondent company is bona fide dispute and the claim made by the petitioner is barred by limitation. Senior counsel for the petitioner contended that in order to admit an application filed by operational creditors under section 9, this adjudicating authority shall make an effort to find out as to whether it is a bona fide dispute or not. He further contended that the dispute need not be pending in a suit or arbitration. It can be even by way of reply to the demand notice provided if the dispute raised by the corporate creditors is bona fide and substantial dispute. Reliance is placed upon the decision in IBA Health (India) Private Ltd. Vs. INFO-DRIVE SYSTEMS SDN BHD reported in (2010) 10 S.C. Cases page 533 wherein it is held if debt is bona fide disputed on substantial grounds petition for winding-up shall not be entertained.
13. Learned counsel appearing for the petitioner cited the decision rendered by Hon'ble National Company Law Appellate Tribunal in the matter of Kirusa Software Private Limited versus Mobilox Innovations P. Ltd. on 24.05.2017. In that decision it is clearly held that the dispute in Insolvency & Bankruptcy must relate to specified nature in clause (a) (b) or (c) of sub-section 6 of section 5 of the code. Hon'ble Appellate Tribunal further held

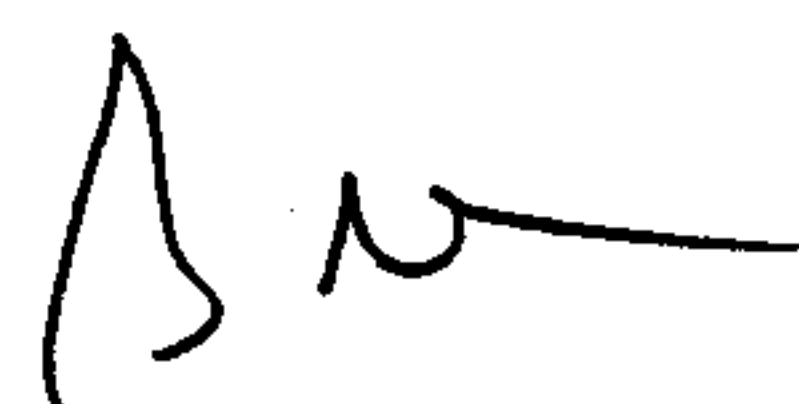


that the dispute raised must not be for the sake of dispute and it should be a bona fide dispute.

14. Hon'ble National Company Law Appellate Tribunal while considering what does "dispute and existence of dispute" means for the purpose of determination of dispute in I & B code held as follows: -

"Though the words 'prima facie' are missing in Sections 8 and 9 of the code, yet the Adjudicating Authority would examine whether notice of dispute in fact raises the dispute and that too within the parameters of two definitions - debt' and 'default' and then it has to reject the application if it apparently finds that the notice of dispute does really raise a dispute and no other factual ascertainment is required. On the other hand, if the Adjudicating Authority finds that the notice of dispute lacks in particulars or does not raise a dispute, it may admit the application but in either case, there is neither an ascertainment of the dispute, nor satisfaction of the Adjudicating Authority.

"The definition of dispute is inclusive and not exhaustive. The same has to be given wide meaning provided it is relatable to the existence of

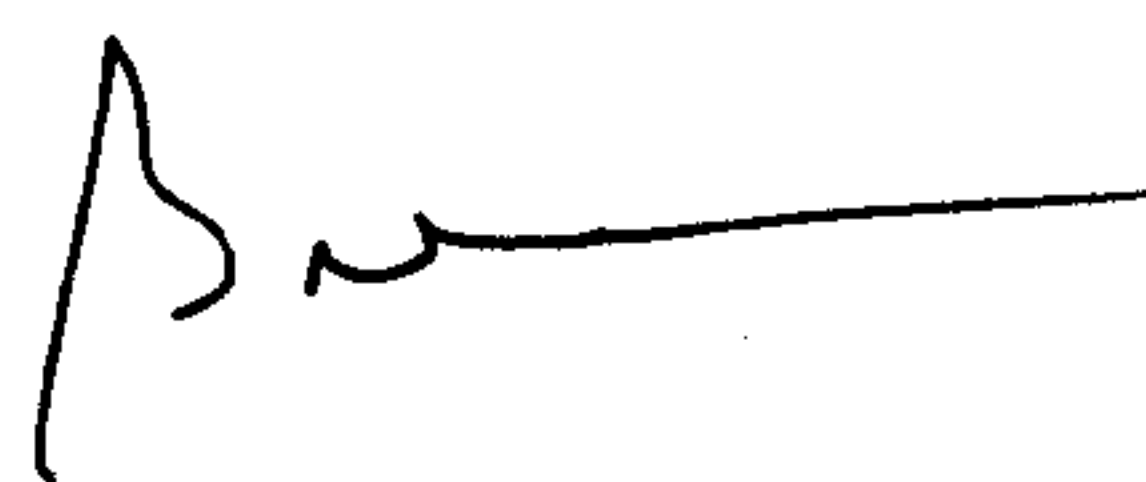


the amount of the debt, quality of good or service or breach of a representation or warranty."

"The intent of the Legislature, as evident from the definition of the term dispute is that it wanted the same to be illustrative (and not exhaustive). The same has to be given wide meaning provided it is relatable to the existence of the amount of the debt, quality of good or service or breach of a representation or warranty"

"The intent of the Legislature, as evident from the definition of the term dispute is that it wanted the same to be illustrative (and not exhaustive). If the intent of the Legislature was that a demand by an operational creditor can be disputed only by showing a record of a suit or arbitration proceeding, the definition of dispute would have simply said dispute means a dispute pending in Arbitration or a suit"

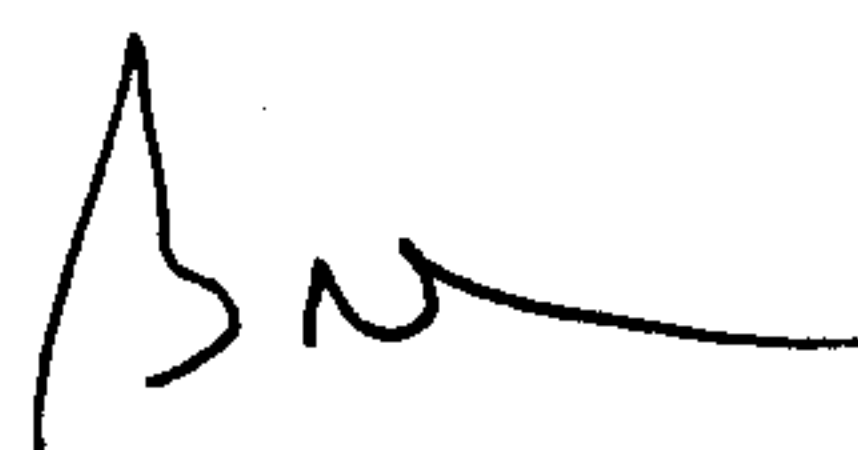
"Admittedly in sub-section (6) of Section 5 of the I & B code, the Legislature used the words 'dispute includes a suit or arbitration proceedings. If this is harmoniously read with Section (2) of section 8 of the I & B code, where words used are existence of a dispute, if any, and record of the pendency of the suit or arbitration proceedings, the result is



disputes, if any applies to all kinds of disputes, in relation to debt and default. The expression used in sub section (2) of section 8 of the I & B code existence of a dispute, if any is disjunctive from the expression record of the pendency of the suit or arbitration proceedings. Otherwise the words dispute, if any, in sub-section (2) of section 8 would become surplus usage.

Sub-section (2) of section 8 of the I & B code, cannot be read to mean that a dispute must be pending between the parties prior to the notice of demand and that too in arbitration or a civil court. Once parties are already before any judicial forum/ authority for adjudication of disputes, notice becomes irrelevant and such an interpretation renders the expression existence of a dispute, if any, in sub-section (2) of section 8 itiose.

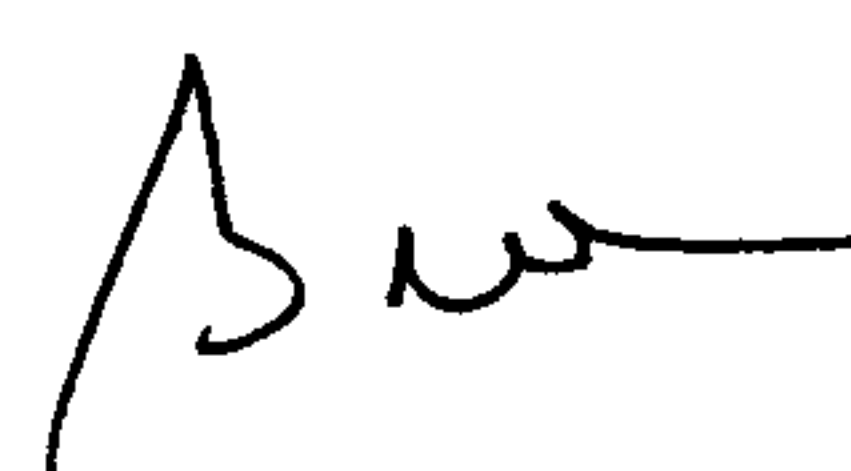
The statutory requirement in sub-section (2) Section 8 of the I & B code is that the dispute has to be brought to the notice of the Operational Creditor. The two comes post the word dispute (if any) have been added as a matter of convenience and/or to give meaning fullness to sub-section (2) of section 8 of the I & B code. Without going into the grammar and punctuation being hapless victim of pace of life, if one discovers the true meaning of



sub-section (2)(a) of Section 8 of the I & B code, having regard to the context of Sections 8 and 9 of the Code, it emerges both from the object and purpose of the I & B code and the context in which the expression is used, that disputes raised in the notice sent by the corporate debtor to the Operational Creditor would get covered within sub-section (2) of Section 8 of the I & B code."

"Mere raising a dispute for the same 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 of law or authority cannot be relied upon to hold that there is a dispute raised by the corporate debtor.

15. National Company Law Tribunal, Mumbai bench in CP No. 45 of 2017 in case of M/s. DF Deutsche Forfait AG and anr. Versus M/s. Uttam Galva Steel Ltd. held that dispute must be pending in a suit or arbitration filed before the receipt of demand notice under section 8.
16. National Company Law Tribunal, Hyderabad Bench in CP (IB) No. 9 of 2017 in the case of K.K.V. Naga Prasad vs Lanco Infratech Limited observed that the Tribunal cannot go into roving enquiry into the disputed claims of parties as the object of IBC, as explained above, is to ensure reorganisation and

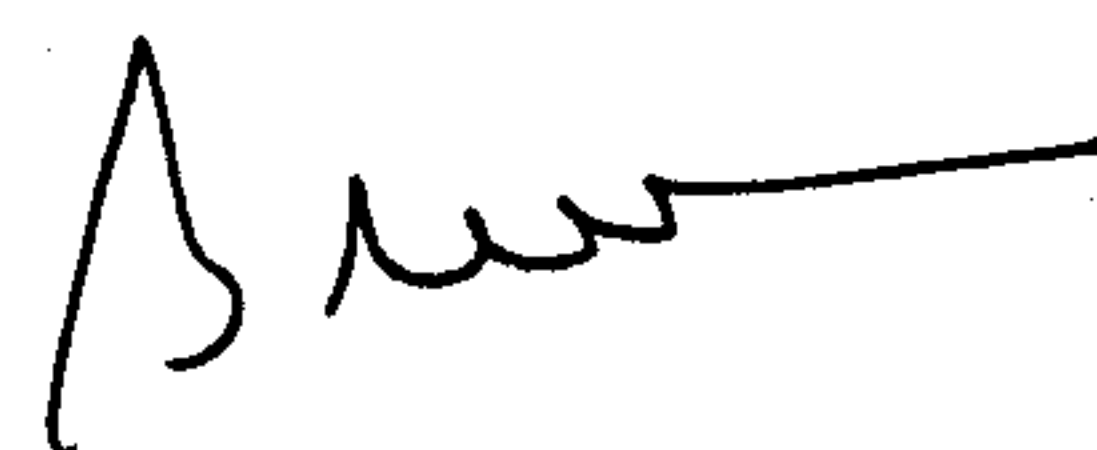


insolvency resolution of Corporate persons, individuals etc. in a time bound manner for maximisation of value of assets persons to promote entrepreneurship etc.

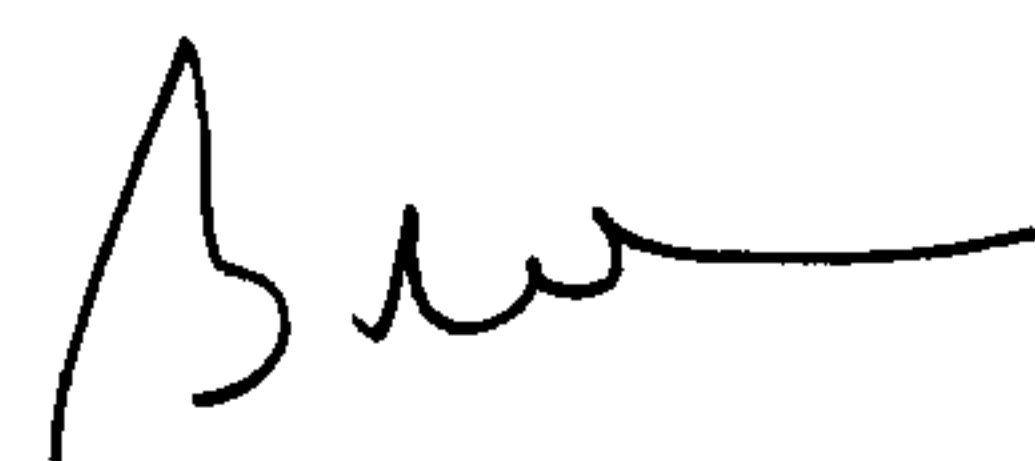
17. National Company Law Tribunal, Principal Bench, New Delhi in Annapurna Infrastructure P. Ltd. & Ors versus Soril Infra Resources Ltd. held as follows: -

"The definition of the word dispute is not exhaustive but is, in fact illustrative. In other words, a corporate debtor is not left with the only option of showing the existence of dispute by way of a pending suit, arbitration or to show the breach of representation of warranty. The corporate debtor would be well within his right to show that goods and services were not supplied at all or the supply was far from satisfactory in case of demand raised by an operational creditor. Hence a corporate debtor would be well within his rights to reject the demand on any sustainable grounds. It would therefore, depend on the facts and circumstances of each case."

18. This bench in the earlier decisions, is of the view that, the dispute must be pending in suit or arbitral proceedings which is instituted before the receipt of demand notice under section 8 of the code.

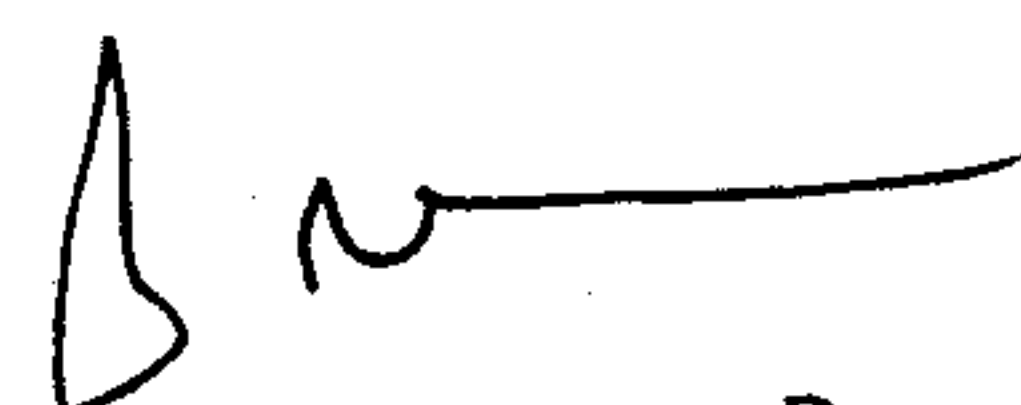


19. In view of the decision of National Company Law Appellate Tribunal in Kirusa Software Pvt. Ltd. versus Mobilox Innovation P. Ltd decided on 24-05-2017 referred to supra, the dispute need not be in a suit or other proceedings and it could be even by way of reply to Demand notice but the Adjudicating Authority has to see whether the dispute raised by the corporate Debtor in the reply notice is a bona fide on substantial grounds or it is only raised to give a colour of dispute or it is illusory dispute.
20. Considering the findings of Hon'ble Appellate Tribunal, I proceed to examine whether the dispute raised by respondent company is a bona fide dispute on substantial grounds or not.
21. In the petition in page 11 column 2 it is stated that the date of default of BCG assignment is June 2012. For the first time petitioner raised the invoice on 31.03.2015. Till such time no demand was made by the petitioner to Pipavav Defence & Offshore Engineering Company Ltd that too on the request of the previous management of the Respondent Company. Admittedly, Pipavav Defence & Offshore Engineering Company Ltd. was taken over by Reliance Defence & Engineering Ltd. on 18.01.2016. The invoice dated 31.03.2015 do not reflect in the ledger copy filed by the petitioner which according to him was given to him by the previous management of the respondent company on 18.01.2016. The period covered by the said ledger is from 01.04.2015 to 18.01.2016. The



invoices that reflect in the said ledger are dated 02.06.2015 and 30.06.2015.

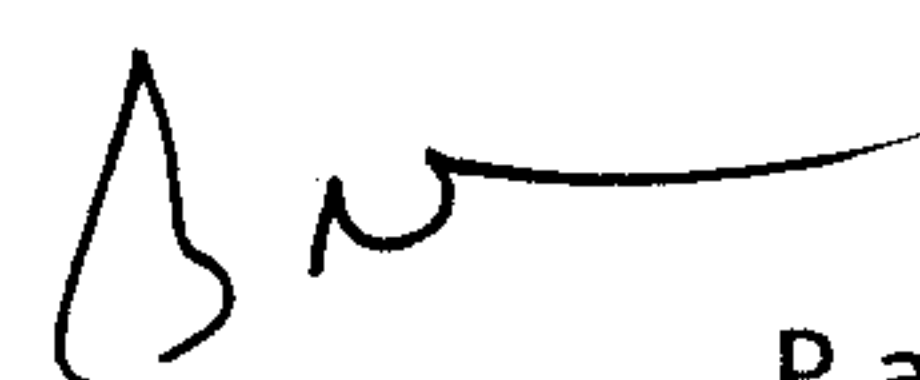
22. Even, according to the petitioner, there was acknowledgement of debt by the Sr. Manager (A/cs. & Finance) by way of email dated 29.06.2015. The first and foremost dispute raised by the respondent is that the purported claim by the petitioner is barred by limitation. It is also the plea of respondent that Mr. Girish Goyal who sent the email acknowledging the debt is not the person authorised to acknowledge the debts. Respondent also disputed the genuineness of the ledger furnished by the previous management of the respondent company to the petitioner on the date of which the company was taken over by the Reliance Defence & Engineering Ltd.
23. In my considered view these two disputes goes to the very aspect of limitation regarding the enforceability of the claim of the petitioner. It is a mixed question of fact and law and it is triable issue. The dispute raised by respondent company is bona fide dispute on substantial grounds.
24. Second dispute raised by the respondent company is that the petitioner is entitled for the payment of Rs. 2.00 crores plus applicable taxes only on successful completion of BCG Assignment. It is the case of the respondent that BCG assignment has not been successfully completed and expected results have not been received by the company and therefore petitioner is not entitled for payment as per letter dated



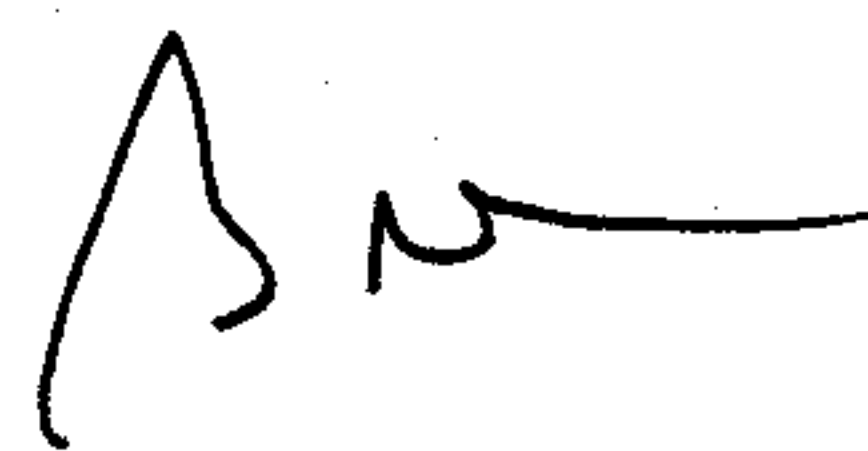
01.05.2012. Here it is pertinent to mention that the petitioner himself by a letter dated 22.06.2015 stated that for the last three years' payment is due to him and he already lost interest in excess of Rs. 1.00 crore on the pending amount. Therefore, from that letter also it is clear that the payment is due to the petitioner since three years prior to 22.06.2015 and he is satisfied with Rs. 1.00 crore on that pending issue.

25. Respondents also stated that as per the statement of accounts vide annexure "N" of the reply a sum of Rs. 3,54,30,232/- is recoverable from the applicant since 31.03.2015 with interest @ 12% per annum and petitioner is still using property of the company viz. Skoda Superb Elegance car and air conditioner. This claim of the respondent against the petitioner can be treated as a dispute referable to clauses (a) of sub section 6 of section 5. The dispute that Boston Consultancy Group Assignment had not been successfully completed is also a bona fide dispute covered by clause (b) of sub-section 6 of section 5.

26. This proceeding is initiated to trigger insolvency resolution process against the respondent company which is having paid up share capital of Rs. 7,36,20,62,690/- with reserve and surplus of Rs. 7,10,71,00,000/-. Petitioner did not state whether there are any other secured creditors that are payable by the respondent company and the company is unable to pay its creditors. Petitioner was appointed on advisory contract basis to undertake certain works by Pipavav Defence and



Engineering Company Limited. which was taken over by Reliance Defence & Engineering Ltd. on 18.01.2016. Petitioner for the first time raised invoice on 31.03.2015 against Pipavav Defence and Engineering Company Limited after the processes of taking over of Pipavav by reliance group commenced. Petitioner did not choose to initiate any claim against Pipavav Defence and Engineering Company Limited, till it was taken over by Reliance Defence & Engineering Ltd. Therefore, the intention of the petitioner is obvious that he wants to compel respondent company's management to pay money claimed by him which according to him is due to him. The very fact that the previous management of the respondent company on the date of handing over of the company to the Reliance Defence & Engineering Ltd. handed over copy of the ledger for the period 01.04.2015 to 18.01.2016 speaks volumes of the understanding between the petitioner and the previous management of the respondent company. Object of the code is to ensure reorganisation and insolvency resolution of corporate persons, individuals etc. and a time bound manner for maximisation of value of assets, persons, to promote entrepreneurship etc. If this petition is admitted it would negate the object for which Insolvency code was brought into force. The petitioner has got several other remedies to recover the amount due to him, if any, in other forums. But the remedy chosen by this petitioner in this forum is not at all in accordance with the object of the code. The intention of the petitioner is somehow to collect the amount allegedly due to him. In the case on hand respondent company raised bona



bona fide dispute on substantial grounds on the claim made by the petitioner. It is already held that in view of the decision of Hon'ble National Company Law Appellate Tribunal the dispute need not be pending in a suit or other proceedings pending before receipt of demand notice under section 8. Therefore, in view of the finding that the respondent raised bona fide dispute on substantial grounds on the claim of the petitioner, petition is liable to be rejected.

27. In the result, petition is rejected.
28. However, findings and observations made by this Authority in this order on the claim of the petitioner or on the dispute raised by the respondent are not binding on the parties to this dispute if it is raised in any other forum.
29. Petitioner is at liberty to recover the amount, if any, due to him through appropriate forum provided if it is not barred by limitation.
30. There is no order as to costs.
31. Communicate copy of this order to both parties.


BIKKI RAVEENDRA BABU
ADJUDICATING AUTHORITY
MEMBER JUDICIAL

*Pronounced by me in open court on
the 2nd day of June, 2017.*

kmn