In The National Company Law Tribunal
Kolkata Bench
Kolkata

C.P. (IB) No. 1129/KB/2019

In the matter of :

An application for initiation of corporate insolvency resolution process by an Operational Creditor under Section 9 and other applicable provisions of the Insolvency and Bankruptcy Code, 2016, (Application to Adjudicating Authority) Rules, 2016.

And

In the matter of :

M/S. SHYAM METALICS AND ENERGY LIMITED, a company within the meaning of the Companies Act, 2013 having its registered office at "Trinity Tower", 83, Topsia Road, 7th Floor, Kolkata 700046;

..... Alleged Operational Creditor

Versus

In the matter of :

M/S. AANCHAL ISPAT LIMITED, a company within the meaning of the Companies Act, 2013 having its registered office at J.L. No. 5, National Highway No. 6, Chamrail, Howrah – 711 114.

.... Alleged Corporate Debtor

Date of pronouncement of the Order : 21/02/2020

Coram: **Shri Jinan K.R., Hon'ble Member (Judicial) &**
Shri Harish Chander Suri, Hon'ble Member (Technical)

Counsel on Record :

1. MR. ABHRAJIT MITRA, Sr. Advocate	]
2. MR. AJAY CHOUDHURY, Advocate	] **For the Operational Creditor**
3. MR. NIRMALYA DASGUPTA, Advocate	]
1. MR. JOY SAHA, Sr. Advocate	]
2. MS. URMILA CHAKRABORTY, Advocate	]
3. MR. ANURAAG MITRA, Advocate	] **For the Corporate Debtor**
4. MR. AASISH CHOUDHURY, Advocate	]
5. MS. AINDRILA BASU, Advocate	]

ORDER

Per Shri Harish Chander Suri, Hon'ble Member (T)

1. This Petition under Section 9 of the Insolvency and Bankruptcy Code, 2016 (I&B Code) read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016, has been filed by **M/s. Shyam Metalics and Energy Limited,** through Mr. Dipak Chattaraj, its Legal Manager, who has been authorised vide minutes of meeting of the Board of Directors held on 6th October, 2018, hereinafter referred to as the **'Operational Creditor',** seeking initiation of Corporate Insolvency Resolution Process in respect of **M/s. Aanchal Ispat Limited,** a Corporate entity, having its registered office at Howrah, West Bengal, hereinafter referred to as the **'Corporate Debtor'.**

Sd Sd

2. It is submitted that the Operational Creditor is inter alia engaged in the business of production of steel, ferro alloys and power with installation of captive power plants at various places. During October and November 2017, the Corporate Debtor had approached the Operational Creditor for procuring Portland Clinker which they urgently required for their business purpose. It was represented to the Operational Creditor that due to paucity of funds, the Corporate Debtor was not in a position to immediately open a Letter of Credit ("LC") for purchasing Portland Clinker. It is further submitted that apart from the value of LC, the Corporate Debtor would pay the opening charges for LC @4% per annum, Margin of 20% over LC before opening of the LC, usual Buyer's Credit charges along with interest, the Exchange Fluctuations differential amount on basis of exchange fluctuations, Insurance charges, MTM charges including port and other charges.

3. It is stated that based on such representation, the Operational Creditor in desire to help the Corporate Debtor, agreed to open the desired LC for acquiring Portland Clinker for the Corporate Debtor. Accordingly, the Operational Creditor opened LC with Canara Bank on January 17, 2018 which was amended on January 18, 2018. The Operational Creditor also availed of Buyers Credit from Canara Bank for a value of USD 2006014.00 for a period of 180 days w.e.f. March 5, 2018. Canara Bank agreed to provide such Buyers Credit for the above value as would be evident from their letter dated February 26, 2018. It is further mentioned that the value of Buyers Credit included the value of 32,609 M.T. of Portland Clinker

agreed to be sold to the Corporate Debtor and 11,000 M.T. of Portland Clinker agreed to be sold to a Group Company of the Corporate Debtor i.e. Aanchal Cement Limited.

4. It is further stated that in the month of December 2017, the Operational Creditor initiated the process of import of Portland Clinker of Vietnam origin, in bulk. The consignment weighing 43,609 M.T. was loaded from Vietnam, on a vessel, namely "M.V. Ocean Carrier" under three Bills of Lading. Out of 43,609 M.T. quantity of Portland Clinker, 32,609 M.T. quantity of Portland Clinker having value of Rs.9,73,76,018/- (Rupees Nine Crore Seventy Three Lakh Seventy Six Thousand and Eighteen Only) was to be delivered at the Dhamra Port. Copies of Commercial Invoices dated January 20, 2018 raised by Biroute limited on the Operational Creditor, the Packing Lists dated January 20, 2018, Certificates of Origin dated January 20, 2018 and the Certificates of Quality dated January 20, 2018 are annexed with the application.

5. It is stated that in good faith and bona fide intent, the Operational Creditor agreed to enter into a High Sea Sale Agreement on representation that the rights in goods imported on behalf of the Corporate Debtor shall stand transferred from the Operational Creditor to Corporate Debtor upon signing of the High Sea Sale Agreement and the Corporate Debtor would be permitted to clear such goods in their name by payment of the customs duty, port charges, vessels demurrage charges, handling charges and other incidental charges. It is further stated that the Operational Creditor and the Corporate Debtor, thereafter, entered into the said High Sea Sale

Sd/- Sd/-

Agreement dated January 25, 2018 being no. SMEL/IMP/HSS/17-18/04 for purchase of 32,609 M.T. quantity of Portland Clinker by the Corporate Debtor.

6. It is also submitted that the High Sea Sale Agreement, however, implicitly provided that the Corporate Debtor has to purchase the said goods of 32,609 M.T. Portland Clinker and make immediate payment of the entire value of the goods amounting to Rs.9,73,76,018/- against transfer of documents. Besides this, the Corporate Debtor is also liable to pay other charges as agreed under the e-mails all dated January 29, 2018. It is further submitted that the Operational Creditor also raised a High Sea Sale Invoice bearing Invoice No. SMEL/IMP/HSS Inv,/17-18/04 dated January 25, 2018. Such invoice was received by the Corporate Debtor without raising any dispute as to their correctness at the material time or at any material time thereafter.

7. It is stated that the representatives of the Corporate Debtor proceeded to take delivery of the entire consignment held at Dhamra Port from the vessel owner. Though the Corporate Debtor would not have been entrusted with the goods without submission of the actual Bills of Lading, however, on the basis of the Operational Creditor's good faith and bona fide, the said goods were entrusted to the Corporate Debtor only on the Operational Creditor's instructions without submitting the actual Bills of Lading. It is stated that the Buyers Credit availed by Operational Creditor became due for payment on August 31, 2018 and accordingly, Canara Bank debited the entire value of the Buyers Credit availed by the Operational Creditor with interest.

8. It is further stated that the Corporate Debtor has made part payment of a sum of Rs.4,20,00,000/- (Four Crore Twenty Lakh Only) till date. A chart showing the details of the part payments along with relevant copies of the Bank Statements are annexed with the application. It is stated that thereafter the Operational Creditor by an email dated April 22, 2019 has intimated the Corporate Debtor to make payment of their remaining outstanding dues. It is stated that after the Operational Creditor had made several requests and reminders to the Corporate Debtor for making payments against the aforesaid consignment, a part payment was made by the Corporate Debtor. However, the Corporate Debtor has failed and neglected to make payment of the remaining principal dues amounting to Rs.6,72,75,347/- (Rupees Six Crore Seventy Two Lakh Seventy Five Thousand Three Hundred Forty Seven Only).

9. It is submitted that the Operational Creditor has claimed Rs.7,48,87,763/- (Rupees Seven Crore Forty Eight Lakh Eighty Seven Thousand Seven Hundred Sixty Three Only) which consists of Rs.6,72,75,347/- as principal outstanding and Rs.76,12,416/- as interest @ 12% p.a. up to June 30, 2019. The Operational Creditor further claims interest at the same rate till the full payment is made. The Operational Creditor has enclosed copies of all the relevant documents mentioned in the application. No name has been proposed by the Operational Creditor for being appointed as an Interim Resolution professional.

10. It is submitted that the Corporate Debtor has defaulted in making payment of the amount outstanding thereby compelling the Operational

SD

Sd

Creditor to issue a demand notice in Form No. 3 which accompanied copies of all the invoices, copy of the demand notice dated 3rd June, 2019, sheet reflecting the break-up of the amount due along with interest. The said demand notice was duly served on the Corporate Debtor on 6th June, 2019 as per the Track Consignment Report. The Corporate Debtor sent a reply dated June 13, 2019. The relevant extracts of the said reply are as under:-

> *"Reference: Your Demand Notice dated 03 June, 2019, purportedly issued under the insolvency and Bankruptcy Code, 2016 ("IBC")*
> *Subject: Notice of dispute under IBC to your Demand Notice.*
> *Dear Sir,*
> *1. We have received your above referred purported Demand Notice on 07.06.2019.*
> *2. At the outset, we are not only surprised but even shocked to receive your purported Demand Notice which evidently is based on assumptions and surmises. The entire factual narration is based on concocted facts which are not only contrary to record but also baseless, a very pertinent fact which even you are aware of.*
> *3. Your purported Demand Notice is clearly an illegal act of blackmailing us, and we have taken a very strict note of the same. We reserve our right to initiate appropriate legal steps as may be advised in this regard.*
> *4. The fact that your purported Demand Notice is illegal and baseless is also evident from the fact that the same is also incomplete. This is because the purported Demand Notice at Serial 7 while referring to (i) Copy of all invoices (ii) Copy of all invoices (ii) Copy of working sheet reflective the break up of amount due along with interest, in actual terms does not attached these referred documents with the copy of the purported Demand Notice. The purported Demand Notice is defective on this account and is liable to be rejected as not being maintainable under the IBC which prescribes a set format, and any deviation from the said format tantamount any such defective notice to be bad in law and hence liable to rejected.*
> *5. In any event, without prejudice to the above, to further prove our*

bona fide, it is submitted that there pre-exists a dispute between us and hence the purported Demand Notice is liable to be rejected on this account also. We are currently in the process of collating all such evidences and will come back to you shortly to further demonstrate your mala fide conduct. Please treat this as interim notice of dispute.
6. In the meanwhile, if you further precipitate this issue, we will be constrained to take appropriate remedial action as may be available under law to us."

11. The Operational Creditor further replied to the reply of the Corporate debtor, by way of its letter dated 19th June, 2019. The relevant extract thereof are also reproduced hereunder:-

" Sub: Your letter dated 13th June,2019 addressed to our letter dated 03,.06.2019 being a demand notice u/s 8 of IBC, 2016.
Sir,
You are aware that our client through our letter dated 03.06.2019 called upon you to make payment of a sum of Rs.7,41,27,756/- including interest (Rupees Seven Crore Forty One Lakh Twenty Seven Thousand Seven Hundred Fifty Six Only), which remains due and payable by you.
In reply to such demand notice dated 03.06.2019, you by a letter dated 13.06.2019 have sought to reply to the same and have demanded documents relied upon by our client.
With reference to your letter dated 13th June, 2019, we are hereby forwarding you the following documents, which reflects the amount due and is payable by you and are relied upon by our client:
a. Invoice of Aanchal Ispat;
b. Statement of Account receivable; and
c. High Sea Sale Invoice
You are thus, once again, called upon to make the payment of our legitimate dues forthwith."

12. The Operational Creditor has filed its affidavit under Section 9(3)(b) of the Code and another affidavit along with Certificate from the State Bank of India to meet the requirement of Section 9(3)(c) of the Code.

13. In reply to the said application, the Corporate Debtor has submitted that the application is not filed in accordance with the forms prescribed under the Code, Rules and Regulations and that the application being defective and there being no record of default with the Information Utility against the Corporate Debtor, the application is not maintainable and needs to be rejected in limine.

14. It is submitted in the reply affidavit that in Part IV Column 2, paragraph 18 of the Petition, the alleged Operational Creditor admits that out of the said purported sum of Rs.9,73,76,018/-, a sum of Rs.4,20,00,000/- has been received. In the circumstances, the purported principal claim of the alleged Operational Creditor cannot exceed a sum of Rs.5,53,76,018/-. It is also submitted that the alleged operational creditor in Part IV, Col-2, paragraph 6 has, however, claimed that (a) a sum of Rs.6,72,75,347/- on account of principal sum due, (b) a sum of Rs.76,12,416/- on account of interest calculated @ 12% p.a. up to 30 June, 2019 due.

15. It is further submitted in the reply that the Company Petition was preceded by a Notice dated June 3, 2019 purported to be a Notice issued under Section 8 of the Code. Long before the issuance of the said Notice dated June 3, 2019, on or about April 4, 2019, pre-existing disputes in writing had been raised by the Corporate Debtor as is manifest from (a)

Sd

Sd

Debit Note dated April 4, 2019 for Rs.97,37,601.80 on account of "Quality Deterioration" and (b) Debit Note dated April 4, 2019 for Rs.35,87,883/- on account of "Shortages" altogether making a sum of Rs.1,33,25,484/-. It is also stated that in spite of receipt of the said Debit Notes the alleged operational creditor has neither challenged the same in any proceeding nor objected to or denied the same in any contemporaneous correspondence.

16. The Corporate Debtor has further submitted that on October 18, 2019 the Corporate Debtor had received an electronic mail from one rating analyst of Brickwork Ratings, Kolkata who has informed the Corporate Debtor about the purported complaint dated October 14, 2019 issued by the alleged Operational Creditor alleging criminal breach of trust and purported non-payment in respect of a transaction in December, 2017. It was further intimated to the Corporate Debtor that the alleged Operational Creditor has allegedly complained of misappropriation of funds by the Corporate Debtor. The alleged Operational Creditor has further acted illegally and unlawfully in complaining to such authorities about certain government investigating agencies conducting raids at the office and factory premises of the Corporate Debtor. Pursuant to such purported complaint the said rating agency has asked the Corporate Debtor to send its detailed response/explanation and also to furnish its annual audited financial statements for the Financial Year 2018-19 and to also apprise the authority about the proceeding lodged by the alleged Operational Creditor against the Corporate Debtor before this Hon'ble Tribunal. Copies of the complaint dated October 14, 2019 forwarded to the Corporate Debtor by

Sd

Sd

the rating analyst of Brickwork Ratings through its email dated October 17, 2019 and the electronic mail dated October 18, 2019 issued by the Credit Rating Agency to the answering respondent are annexed with the application.

17. The Corporate Debtor has disputed and denied that the Operational Creditor is entitled to a sum of Rs.7,48,87,763/- or any other sum due or outstanding. The Corporate Debtor has enclosed with its reply e-mail dated 2nd November, 2018 sent by the Corporate Debtor to the Operational Creditor. The extracts of which are reproduced below:-

"Respected Bhushan Bhaiya,
Greetings for the day! Hope you are doing well.
The material received against LC issued by you on 31st of January, 2018, for Dhamra Port and dispatch of the material from Dhamra Port to different parties has been done till 25th of June, 2018, because of shortage of supply of rakes from railway department.
As you know bhaiya that clinker is a perishable commodity whose quality deteriorates when it comes in contact with water. As our material was lying at Dhamra Port for around five months it got wet due to rains in the month of May and June and because of that we had to sell the material at a cheaper rate less than our costing.
The total value of material received against your LC is Rs.13.05 crores approx. out of which we have already made the payment of Rs.6.50 crore (excluding 2 cheques of Rs.25.00 Lakh each lying with you and have asked Mr. Rahul Garodia to transfer an amount of Rs.1.50 crore approx. for the amount which is due with your concern against some work done by us. So the due amount remains (Rs.13.05 crore – Rs.8.00 crore) approx. to Rs.5.05 crore.
Bhaiya because of high level of inventory as per my capacity of clinker and MS Round, Angle and Chanel, we are going through some shortage of liquid fund. Considering the above consequences if you have any doubt or any single point of stress regarding the payment, we assure you to deliver materials of Rs.5.00 Crore within 24 hours in

the form of Clinker/MS angle Round or Channel.
One more reason of some short of liquid funds is two big departmental raids in the month of January and May in my group concern in which Rs.8-10 crore were blocked due to immediate ad hoc payment.
However, if you show faith on us which you are showing from last 10 years, I promise to abide by the same and will clear the payment by 31st of December, 2018. As I am connected with your concern since last 10 years it is affecting me so badly that I am not being able to face Sri Mahavir uncleji and Sri Bajrang uncleji just because of delay in payment from my side.
I forward this for your response and instructions.
Thanks & Regards
Mukesh Goel
Aanchal Group."

18. Similarly, another letter is stated to have been sent through **whatsapp**, by the Corporate Debtor to the Operational Creditor. The same is also reproduced as under:-

"Respected Bhusan bhaiya ... hope u r doing well. Bhaiya I am very sorry for delay in ur paymt, because of unwanted situations all these happened. I don't want to go in any type of legal confrontation with you.
Bhaiya u r handling big cooperate house and I am very very small manufacture in front of you.
I will never keep any of your actual fund pending which u owes to me. I will just request for tym which I need to repay ur dues amt.
I will nt be able to pay interest bcz Already I am bearing huge loss in this transaction even some of stock still lying at factory till date which I am using by mixing fresh material, some of debtors also not paying us.
I am also unable to face Sri Mahabir uncle and Sri Bajrang uncle Pls cooperate.
Thanks."

According to the Operational Creditor these two letters clearly indicate admission and acknowledgement of default on the part of the Corporate Debtor.

19. In the rejoinder to the reply, the Operational Creditor has submitted that non denial of the averments made in the application by the Corporate Debtor, is a clear cut admission on the part of the Corporate Debtor. The Operational Creditor has replied to each and every averments/allegations made by the Corporate Debtor in the reply affidavit. The Operational Creditor has reiterated and reaffirmed the averments made in the application and has submitted that the Operational Creditor has rightly claimed a sum of Rs.6,72,75,347/- on account of principal sum due and a sum of Rs.76,12,416/- on account of interest calculated @12% p.a. up to June 12, 2019.

20. It is submitted by the Corporate Debtor that vide letter dated 10th July, 2019 the Corporate Debtor had raised the issues of shortage and quality deterioration of supplies made to the Corporate Debtor. The relevant para 6 of the said letter is reproduced as under:-

"As stated inter alia above, your client has not informed you of the complete factual matrix involved in the instant case. It is, thus, pertinent for us to bring to your notice and to the notice of your Client that there was a shortage in quantity received from Dhamra port, where invoiced quantity of 32,609 MT was to be unloaded against the quantity stated in the HSS Agreement with Aanchal ispat. However, at the time of dispatching the unloaded quantity from Dhamra Port Authority, we learnt that with the dispatch from Dhamra Port on 20.02.2019, there was a shortage of about 900 MT at Dhamra Port which was duly brought to the knowledge of your

client. Your client was, inter alia, was also informed about the quality deterioration issues. Thus, to resolve the issues of shortage and quality deterioration, sometime around March 2019, your client approached us and assured us to reimburse us with the cost of the material as well as extra duties & taxes already paid against shortage quantity. Your client also assured us that it would compensate us against the quality deterioration at the rate of 10% of the shipment value and hence, advised us to issue a Debit Note in this respect. Accordingly, in the month of April, 2019, we issued a Debit Note to your Client for having debited a sum of INR 97,37,601.80 against quality deterioration and issued another Debit Note to your client for having debited a sum of INR 35,87,883.00 towards Shortage (inclusive of duties & taxes). Hence, in total, a further sum of INR 1,33,25,484.00 was to be reimbursed by your client against the total supply of INR 9,73,76,018/- which your client suppressed from you."

21. It is further submitted that the Corporate Debtor had written a letter dated 6th May, 2019 to the Operational Creditor which referred to two debit notes dated 4th April, 2019 for Rs.97,37,601.80 and Rs.35,87,883/- respectively. The relevant extracts of the said letter are reproduced as under:-

"6th May, 2019
To
The Director
Shyam Metalics & Energy Limited
Trinity Tower, 7th Floor
83, Topsia Road,
Kolkata 700046
Kind Attention: Sri Brij Bhushan Agarwal
Respected Sir,
This is in continuation to our Debit Notes both dated 04.04.2019 for Rs.97,37,601.80 and Rs.35,87,883.00 respectively.
As has been indicated to you several times in the past that the materials in question were lying at Dhamra Port from the end of January 2018 till about 25 June 2018. The delivery of the said

Sd

Sd

materials by you to us took a period of almost five months during which time you made no arrangement or provision for protecting the said goods from exposure to rain water or excessive moisture. In this regard it is relevant to point out that movement of trucks is not permitted in the Dhamra Port area and as such the movement of the materials could only take place through railway rakes.

While payment in respect of the said railway rakes was to be made by us, the same was to be arranged and placed by you. The entire High Seas Sale Agreement had taken place on the basis of your assurance and representation that you being in the business of regularly importing materials have the necessary means and resources to arrange for immediate placement of railway rakes. Ultimately by reason of your failure to arrange the said railway rakes we had to ourselves arrange for the placement of the said railway rakes.

The delay of five months in moving the goods from the port area led to enormous deterioration in the quality of the said "Portland Clinker" which could not be entirely assessed at the time of raising the said two Debit Notes both dated 04.04.2019.

The materials supplied by you have been partially used by us in our manufacturing process and have been partially sold by us to third parties. Letters of complaint received from third parties now compelled us to reject the entire quantity of goods supplied by you and to ask for reimbursement of the amounts already paid to you as also for payment of our Debit Notes both dated 04.04.2019.

Having regard to our long standing business relationship that you and the entire Shyam SEL Group, we will not claim any damages and/or compensation for the sub-standard goods supplied in the event the Debit Notes raised on you and the amounts paid to you are repaid within a period of 30 days from the date of this letter.

The materials supplied by you to Aanchal Cement Limited being our sister concern was moved out of the Haldia Port by trucks within a short span of time and consequently the same remained unaffected by exposure to rain and moisture. Thus we have not raised any claim on you in respect of goods supplied by you to Aanchal Cement Limited which formed a part of the same consignment.

Thanking you.
Yours faithfully,
For Aanchal Ispat Limited
Sd/-
Authorised Signatory"

22. During the course of arguments, Ld. Counsel for the parties vehemently argued their respective points. The main issue which would be most relevant to resolve this controversy was stuck on the question, whether the Debit Notes stated to have been issued by the Corporate Debtor to the Operational Creditor were actually brought to their notice or not? The Operational Creditor has completely denied any such thing having been brought to its notice by any correspondence whatsoever. The Corporate Debtor was directed to prove the service of letter dated 6th May, 2019 which according to the Corporate Debtor had been issued much before the demand notice dated 3rd June, 2019. The Corporate Debtor filed its Supplementary Affidavit dated 14th January, 2020.

23. While challenging even the scope of filing Supplementary Affidavit filed by the Corporate Debtor, the Operational Creditor has submitted that the Supplementary Affidavit filed by the Corporate Debtor is based on concocted and manufactured documents and the same would be apparent on the face of the said document.

24. It is submitted that Aanchal Iron & Steels Private Limited and Aanchal Cement Limited are two distinct and separate juristic entities and the confusion which is being sought to be raised by the Corporate Debtor by

Sd

Sd

intermingling the Corporate Entities under the cloak of Group Companies, is illegal and unlawful. It is submitted that from a bare perusal of letter dated 6th June, 2019 annexed with the Supplementary Affidavit, it is evident that one corporate and/or juristic entity had given securities for another corporate and/or juristic entity and the same cannot have any bearing or relation for the purpose of adjudication of the present issue.

25. It is submitted that letter dated 6th June, 2019 does not have any relevance for the purpose of adjudication of the instant issue and/or issues pending for adjudication. The Operational Creditor further denied and disputed that the Corporate Debtor or any other Companies are entitled to receive any payment from the Operational Creditor or other Companies, as alleged in the rejoinder. It is stated that there is no concept of Sister Concern known to the Company and the Corporate Debtor is trying to cast a doubt over the genuineness and bona fide claim of the Operational Creditor which is otherwise admitted by the Corporate Debtor in various documents.

26. The Operational Creditor has further denied the factum, validity, content and legality of the purported letter dated 6th May, 2019 alleged to have been issued by the Corporate Debtor as the Operational Creditor has not received the said document in any manner whatsoever at any point of time. The Operational Creditor has further denied that the purported courier receipt is nothing but a manufactured document, created merely for the purpose of the present litigation.

27. Ld. Sr. Counsel for the parties have submitted their respective arguments. While the Ld. Sr. Counsel for the Operational Creditor has taken us through all the documents to prove his claim and has more or less convinced about the validity of its claim, the Corporate Debtor while placing its defense arguments before this Bench indicated that two Debit Notes had been issued on 04.04.2019 for Rs.97,37,601.80 and Rs.35,87,883/- respectively, prior to the demand notice and sent to the Operational Creditor.

28. In reply to the said argument, introducing the factum of issuance of two Debit Notes, the Operational Creditor immediately reacted to search a defence and submitted that this has been brought into pleadings for the first time as no such letter dated 6th May, 2019 or the alleged debit notes had ever been received by the Operational Creditor because there was no proof of the Corporate Debtor having sent the letter dated 6th May, 2019 or the alleged debit notes dated 4th April, 2019 having been sent to or received by the Operational Creditor. The whole controversy thus was depending on the receipt of the letter dated 6th May, 2019 and the Ld. Counsel for the Corporate Debtor submitted that he would file the proof of the two debit notes having been served on the Operational Creditor and the letter dated 6th May, 2019.

29. The Ld. Sr. Counsel filed the Supplementary Affidavit dated 17th February, 2020 along with copy of the delivery receipt for POD and

Sd

Sd

submitted that the delivery of the letter dated 6th May,2019 was effected on 10th May, 2019 and was received by the Operational Creditor M/s. Shyam Metalics and Energy Limited. On perusal of the delivery receipt produced by the Corporate Debtor, issued by M/s. Shree Anjani Courier Service, the letter dated 6th May, 2019 was allegedly received by M/s. Shyam Metalics and Energy Limited i.e. the Operational Creditor vide C/N No. 1029943375 on 10th May, 2019.

30. On the question of record relating delivery of debit note and the delivery receipts produced by the Corporate Debtor and the delivery of letter dated 6th May, 2019, the Operational Creditor in reply to the Supplementary Affidavit filed by the Corporate Debtor on 17.02.2020 submitted its reply on 18.02.2020 and submitted that the said purported document is of one Shree Anjani Courier Service and another document is pertaining to one Arihant Courier Services. However, the courier agency was Shree Mahabali Express, through which the consignment was booked. It is further submitted that on February 12, 2020 the Advocate appearing for the Corporate Debtor had addressed a letter to Babita Enterprises for seeking for proof of delivery of the letter dated May 6, 2019. However, in the present Supplementary Affidavit the said Babita Enterprise had proceeded a step further and had sought to issue purported delivery sheet, one issued by Shree Anjani Courier Service and another issued by Arihant Courier Services. However, no such letter or debit notes were ever received by the Operational Creditor. It is submitted that the purported rubber stamp and/or the alleged signatory on behalf of the Operational Creditor in

and over the said delivery sheets are not of the Operational Creditor and the same are concocted and had been made and manufactured for the purpose of the present litigation.

31. It is submitted that the Operational Creditor has also carried out an enquiry and necessary searches with regard to the other consignment and it would be apparent that the tracking details of other consignments of contemporaneous dates are available save and except with respect to the purported courier receipts. The Operational Creditor has further submitted that these documents are manufactured and tracking details of such couriers are also not available on line. There are discrepancies in the consignment numbers of the said courier receipts which are apparent on the face of the records.

32. To prove it further, the Operational Creditor submitted that the Corporate Debtor had submitted that the relevant courier agency does not provided on line tracking details of consignment within the city of Kolkata. However, for the purpose of ascertaining such purported facts, the Operational Creditor had booked a consignment through the said courier agency viz., Shree Mahabali Express Limited and obtained the tracking details of such consignment which are also to be delivered within the City of Kolkata and the tracking details are available in the Website and the same shows as "Status: Out for Delivery".

33. The only important fact that can tilt the scale towards the Truth is the issuance of two debit notes dated 4th April,2019 alleged to have been issued

and served by the Corporate Debtor to the Operational Creditor which are for a sum of Rs.97,37,601.80 and Rs.35,87,883/- respectively. While the Corporate Debtor had enclosed these documents with its reply followed by a letter dated 6th May, 2019 as Annexure 'E' to the reply, a reference of which has also been made by the Corporate Debtor in its alleged letter dated 6th May, 2019 allegedly sent to the Director of Shyam Metalics and Energy limited through courier. The Corporate Debtor had not filed any proof of delivery or mode of service or any receipt of this letter having been received by the Operational Creditor.

34. Similarly, there was no proof of receipt or delivery of debit notes alleged to have been issued by the Corporate Debtor to the Operational Creditor on 4th April, 2019. In spite of the unsuccessful attempt made by the Corporate Debtor by filing its supplementary affidavit, on the insistence of the Operational Creditor the proof of delivery has been found to be a farce. The main plank of the case of the Corporate Debtor having fallen, due to the receipts produced and placed on record issued by different courier services, at the instance of the Corporate debtor, the case of the Operational Creditor has risen even to a better pedestal and stands proved without any shadow or doubt.

35. We have gone through all the pleadings, documents and heard both the parties at great length. We are of the considered view that the application filed by the Operational Creditor deserves a clear cut admission and we, therefore, order that the application stands admitted with the following directions/orders:-

Sd-

Sd

ORDERS

i) The application filed by the Operational Creditor under Section 9 of the Insolvency & Bankruptcy Code, 2016 for initiating Corporate Insolvency Resolution Process against the Corporate Debtor, **M/s. Aanchal Ispat Limited** is hereby **admitted.**

ii) We hereby declare a moratorium and public announcement in accordance with Sections 13 and 15 of the IBC, 2016.

iii) Moratorium is declared for the purposes referred to in Section 14 of the Insolvency & Bankruptcy Code, 2016. The IRP shall cause a public announcement of the initiation of Corporate Insolvency Resolution Process and call for the submission of claims under Section 15. The public announcement referred to in clause (b) of sub-section (1) of Section 15 of Insolvency & Bankruptcy Code, 2016 shall be made immediately.

Iv) Moratorium under Section 14 of the Insolvency & Bankruptcy Code, 2016 prohibits the following:-

a) The institution of suits or continuation of pending suits or proceedings against the 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 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 the possession of the corporate debtor.

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

vi) 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.

vii) The order of moratorium shall have effect from the date of admission till the completion of the corporate insolvency resolution process.

viii) 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 the corporate debtor under Section 33, the moratorium shall cease to have effect from the date of such approval or liquidation order, as the case may be.

ix) **Mr. Bijay Murmuria,** of 6A, Geetanjali Apartment, 8B Middleton Street, Kolkata 700071, registered with Insolvency and Bankruptcy Board of India, having registration number **IBBI/IPA-001/IP-N00007/2016-2017/10026,** E.mail ID: bijay murmuria@sumedhamanagement.com, **Mobile No. 9830039390,** is hereby appointed as Interim Resolution Professional by this Tribunal for ascertaining the particulars of creditors and convening a meeting of Committee of Creditors for evolving a resolution plan subject to production of written consent within one week from the date of receipt of this order.

x) The Interim Resolution Professional should convene a meeting of the Committee of Creditors and submit the resolution passed by the Committee of Creditors and shall identify the prospective Resolution Applicant within 105 days from the insolvency commencement date.

xi) The Operational Creditor is directed to deposit Rs.1,00,000/- (Rupees One Lakh Only) in the ESCROW Account in SBI to be operated through the Registrar NCLT, Kolkata Bench, for the purpose of meeting the preliminary expenses for initiating the CIR Process by the IRP. IRP can claim the preliminary expenses and fees subject to the approval by the CoC and after constitution of CoC.

Sd/-

Sd/-

xii) Registry is hereby directed to communicate the order to the Operational Creditor, the Corporate Debtor and to the I.R.P. by Speed Post as well as through E-mail.

xiii). List the matter on **07.04.2020** for filing of the progress report.

xiv) Certified copy of the order/Free copy may be issued to all the concerned parties, if applied for, upon compliance with all requisite formalities.

Sd

(Harish Chander Suri)
Member (T)

Sd
21/2/20

(Jinan K.R.)
Member (J)

Signed on this, the 21st day of February, 2020

VC