IN THE NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD
DIVISION BENCH
COURT - I

ITEM No 302
C.P.(IB)/67(AHM)2021

Order under Section 9 IBC

IN THE MATTER OF:

Petroserv Corporation FZC ....**Applicant**
V/s
John Energy Ltd ....**Respondent**

Order delivered on 09/02/2024

Coram:

Mr. Shammi Khan, Hon'ble Member(J)
Mr. Sameer Kakar, Hon'ble Member(T)

PRESENT:

For the Applicant :
For the Respondent :

ORDER

The case is fixed for pronouncement of the order. The order is pronounced in open Court, vide separate sheet.

-SD-
SAMEER KAKAR
MEMBER (TECHNICAL)

-SD-
SHAMMI KHAN
MEMBER (JUDICIAL)

BEFORE THE ADJUDICATING AUTHORITY
NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH –I, AHMEDABAD

CP(IB)/67(AHM)/2021

(An application filed under Section 9 of the Insolvency and Bankruptcy Code, 2016 r/w Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016)

In the matter of **John Energy Limited**

Petroserv Corporation FZC
Having its address at:
C1-1412-028, Ajman Free Zone
UAE

...Applicant/Operational Creditor

VERSUS

John Energy Limited
(CIN: U29224GJ1987PLC010044)
Having its address at:
Plot No. 220, GIDC Estate,
Mehsana-384002, Gujarat

...Respondent/Corporate Debtor

Order pronounced on 09.02.2024

CORAM:

SHAMMI KHAN, MEMBER (JUDICIAL)
SAMEER KAKAR, MEMBER (TECHNICAL)

APPEARANCE

For the Applicant	: Mr. Percy Kavina, Sr. Adv. a/w. Mr. Raju Kothari, Adv. & Mr. Anip Gandhi, Adv.
For the Respondent	: Mr. Manish Bhatt, Sr. Adv. a/w. Mr. Ankit Talsania, Adv.

<u>O R D E R</u>

(Per: **BENCH)**

1. This is an application filed on 22.03.2021 by **Petroserv Corporation FZC ("the Applicant/Operational Creditor")**, having its Identification No.14344 and registered office at C1-1412-028, Ajman Free Zone, UAE under Section 9 of the Insolvency and Bankruptcy Code, 2016 (**"IBC, 2016"**) read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 against **John Energy Limited** ("**the Respondent/Corporate Debtor"**) with a request to admit the application, commence Corporate Insolvency Resolution Process (**"CIRP"**), appoint Interim Resolution Professional (**"IRP"**) and declare the moratorium for having defaulted payment of the operational debt of **USD-3,648,407.00** equivalent to **Rs.26,40,22,080.32ps.**

2. The Corporate Debtor named in the application is one **John Energy Limited**, having CIN: No. U29224GJ1987PLC010044. The Corporate Debtor was incorporated on 09.10.1987 and is having its registered office at Plot No. 220, GIDC Estate, Mehsana-384002.

3. The application is affirmed by one Mr. Sahil Bhatia who is authorized by Power of Attorney dated 27.02.2020.

4. On perusal of Part-III of the Form-V reveals that the Applicant has not named any IRP.

5. On perusal of Part-IV of the Form-V, reveals that the Applicant is claiming a total debt of USD 36,48,407 equivalent to Rs.26,40,22,080.32 calculated at exchange rate of 1 USD = 72.3664 rupees.

6. The Corporate Debtor approached the Operational Creditor for provision of services for transportation and custom clearance of Oil Rigs John no. 16 & 17 and John no. 20 & 26 along with all complete loads, which include provision of required trucks for loading vessel, custom clearance, loading and transportation, loading at vessel as per the instructions of the DS/Tool pusher on credit.

7. It is stated that a service contract bearing no. ALG/SON/TINR/TRA/JOHN 17 & 16 dated 13.04.2017 and ALG/SON/TINR/TRA/JOHN 26 & 20 dated 01.12.2017 was entered into between the parties detailing

terms and conditions of services. The same is marked as Annexure-II.

8. Pursuant to the services contracts the Operational Creditor issued various invoices and delivered the said services to the Corporate Debtor. The Corporate Debtor despite accepting delivery of the said services, without any protest and demur, failed to make payment of the following invoices:-

Sr. No.	Invoice No.	Dated	Amount (USD)
1.	020/2017	17.12.2017	708,000.00
2.	021/2017	17.12.2017	708,000.00
3.	022/2017	23.12.2017	284,026.00

4.	023/2017	23.12.2017	284,026.00
5.	024/2017	23.12.2017	20,685.00
6.	025/2017	23.12.2017	32,505.00
7.	026/2017	23.12.2017	2,000.00
8.	027/2017	23.12.2017	626,800.00
9.	028/2017	23.12.2017	25,845.00
10.	029/2017	23.12.2017	2,000.00
11.	030/2017	23.12.2017	626,800.00
12.	001/2018	25.01.2018	11,748.00
13.	002/2018	25.01.2018	140,254.00
14.	003/2018	25.01.2018	175,718.00
TOTAL INVOICE AMOUNT (USD)			**3,648,407.00**

9. It is stated that as per the contract, the payment terms were agreed to be 60 days from the date of receipt of invoice. The bills of ladings were issued which are marked as Annexure-II(c).

10. It is stated that upon successful completion, the Corporate Debtor issued appreciation letter and certificate of recommendation dated 20.02.2018 appreciating the Operational Creditor for the services undertaken and completed by the Operational Creditor along with business partner SARL NAFTCOM.

11. It is stated that there was some delay in the arrival of the Corporate Debtor's vessels at Skikda port and certain losses were suffered by the Operational Creditor.

12. It is stated that Corporate Debtor has even issued a certificate of recommendation dated 21.01.2018 in favour of SARL NAFTCOM a transit & logistic company engaged by the Operational Creditor.

13. It is stated that the Corporate Debtor vide letter dated 19.02.2018 acknowledged debt of USD 36,48,407 while confirming that all invoices are submitted are in line with executed contract and are undisputed and assured that the debt will be repaid to the Operational Creditor by 25.03.2018.

14. It is stated that vide email dated 30.08.2018, the Corporate Debtor acknowledged receipt of the invoices. It is stated that upon request from the Corporate Debtor, the Operational Creditor had even issued the bank guarantee release certificate on 04.06.2018. Despite several reminders, the Corporate Debtor has not released the payment.

15. It is stated that the auditors of the Corporate Debtor vide their email dated 07.02.2019 contacted the Operational Creditor for balance confirmation whereby the auditor of the Corporate Debtor confirmed that as per books of accounts of the Corporate Debtor, a closing balance of USD 33,20,687credit was as on 30.09.2018. The email communication between the auditor of the Corporate Debtor and the Operational Creditor is annexed as Annexure-II(i).

16. It is stated that a demand notice dated 09.04.2019 was issued through the advocate under Section 8(1) of IBC, 2016 and the said demand notice was delivered on 13.04.2019. The said demand notice was replied on 29.04.2019 raising certain frivolous disputes. The reply of the Corporate Debtor is annexed as Annexure-II(j).

17. The date of default is stated to be several dates as the invoices were payable within 60 days from the date of receipt of the invoice. Accordingly, the first date of default is mentioned as 15.02.2018 and the last date of default is 26.03.2018.

18. It is stated that the limitation got extended by virtue of acknowledgement, recommendation and appreciation letter issued by the Corporate Debtor vide letter dated 19.02.2018 and further extended by debt confirmation from the auditors of the Corporate Debtor vide their email dated 07.02.2019. The Operational Creditor relied upon the following documents:-

LIST OF OTHER DOCUMENTS ATTACHED TO THIS APPLICATION IN ORDER TO PROVE THE EXISTENCE OF OPERATIONAL DEBT AND THE AMOUNT IN	1. Particulars of Claim; 2. Copy of certificate of recommendation dated 21st Jan. 2018; 3. Copy of appreciation letter dated 20th Feb. 2018; 4. Copy of certificate of recommendation dated 20th Feb. 2018; 5. Copy of corporate debtor's letter dated 19th Feb. 2018 acknowledging debt; 6. Copy of corporate debtor's email dated 30th Aug. 2018;

	DEFAULT	7. Copy of bank guarantee release certificates; 8. Copy of Email Communications sent by Operational Creditor demanding Payment of outstanding dues; 9. Copy of Email Communications exchanged between auditor of corporate debtor and operational Creditor; 10. Copy of demand notices as in Form 3 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 served on the corporate debtor; 11. Copy of notice of dispute received by operational creditor from advocate of corporate debtor;

19. After issuance of notice the Corporate Debtor appeared and affidavit in reply was filed vide Diary No.2075 dated 26.11.2021 and is affirmed by one Mr. Ajit Singh, the Vice

President of the Corporate Debtor. The summary of reply/objection is as under:-

i. The present petition has been filed without the proper authorization of the said purported Operational Creditor.

ii. The Operational Creditor has not signed the petition and has not affirmed the affidavit in support of the present petition.

iii. The petition is based upon the Power of Attorney given by one Mr. Souid Hassen in favour of one Mr. Sahil Bhatia.

iv. The said Power of Attorney is not stamped as per Gujarat Stamps Act 1958.

v. Demand notice dated 09.04.2019 was issued by one Ardent Legal through the advocate for the Petitioner and there is nothing on record to substantiate that the said Ardent Legal was authorized by the Petitioner to issue the alleged demand notice.

vi. The Power of Attorney was executed in February 2020 i.e., after the date of issuance of the alleged demand notice.

vii. There is a gross delay in filing the petition. The demand notice dated 09.04.2019 was replied on 29.04.2019 and the present application has been filed almost 23 months after the issuance of the demand notice. The time gap between the issuance of the demand notice and the filing of the petition has not been explained and is beyond reasonable time.

viii. Annexure-2(d) and 2(e) are fabricated, concocted and false and were not forming part of the demand notice.

ix. The loan letters/certificates/acknowledgements were never issued by the Respondent Company and were created only to maintain this petition.

x. Annexure-2(d) and 2(e) are signed by one Mr. Praveen Gautam with whom there are several disputes of the Respondent Company. The said Praveen Gautam has colluded with other persons including Mr. Sahil Bhatia and has inter alia fabricated documents with a view to extort money from the Respondent-Company.

xi. The Respondent-Company has lodged a complaint before the concerned police station against the said Mr. Praveen Gautam, Mr. Sahil Bhatia and Mr. TaharSouid, inter alia, for forgery and various other offences.

xii. The said Mr. Praveen Gautam used to work under the instruction of Mr. Mahesh Vyas as per the Board Resolution dated 28.06.2012. Mr. Praveen Gautam was not working for the Respondent Company when the documents at Annexure-2(e) and 2(d) were purportedly issued and these documents are bogus, backdated, forged and subject matter of criminal investigation.

xiii. The Respondent Company came to know about these documents only when the said petition was served upon the Respondent. Respondent, thereafter, draws attention to Clause 16 of the said agreement which is reproduced below:-

> *"All Communications and correspondences in this Contract shall be addressed as follows :-*
>
> *John Energy Limited (Algeria) 20, Rue Djenane EI Milk*
> *Hydra, Alger Algeria*
> *Attention: Mr/ Pravin Gautam*

Tel No. 213 21 48 09 07
&
John Energy Limited (India)
101, Shapath-III 1st Floor
SG Road Near GNFC Tower
Ahmedabad-3800053

Attention: Mr. Darshil Shah

Tele No. 9179-26852736.......

If you are not able to send the documentations to Indian address then kindly send the scan copy of the documentation on the above e-mail Id of Mr. Darshil Shah".

xiv. The Respondent, thereafter, has given the background of the transactions. According to the Respondent, the drilling rigs, namely, John no. 16,17,26 and 20 were sent to Tinerhert Block in Amenas, Algeria to carry out certain works. Upon completion of the said work the rigs were required to be transported back to India and for which two contracts have been entered into between the Operational Creditor and the Respondent.

xv. Thereafter, the Respondent has narrated the salient features of the two contracts.

xvi. It is the case of the Respondent that the Applicant has breached the various clauses and has not provided the requisite number, size and capacity of trucks/trailers at rigs site within the stipulated time and has failed to execute the desired contracted work as per timelines given to them resulting into delay in transportation, shipping etc., and also additional financial burden of the Respondent.

xvii. The Respondent was required to transport entire Rig no. 16 &17 and Rig no. 26 & 20 to the Indian Port along with all materials, equipment and inventories therein in good condition. However, the Respondent has not transported each and every material, equipment and inventory as were there in Rig no. 16 &17, 26 & 20. The Petitioner had retained some of the materials, equipment and inventories at ANS-BP-757-ZI-HASSI MESSAOUD, ALGERIA at the premises of NaftCom (sister concern of the Petitioner). Copy of such retained materials, equipment and inventories is enclosed herewith marked as Annexure F hereto. The value of retained materials, equipment and inventories is around 330 032 093.07 DZD which is equivalent to INR 19,28,72,156.64.

xviii. It is stated that as per contract the goods once loaded on the equipment shall be at the sole risk and complete responsibility of the contractor and any losses arising out of damage, non-delivery, short-delivery and delay in delivery, theft, pilferage, accident, fire etc., shall be the liability of the Contractor. The said goods while in the possession of the Petitioner were stolen/misplaced for which the Petitioner alone is responsible.

xix. Consequently, the Respondent had to purchase such materials, equipment and inventories from the market in order to install Rigs at other places, and accordingly, the Respondent had to incur a cost of Rs.27,77,60,593.86. Copy of purchase of such materials, equipment and inventories from the market in order to install Rigs at other places is enclosed herewith marked as Annexure G- of reply.

xx. It is stated that the time is the essence of the said contract with the Petitioner and the Petitioner vide Clause 12.1 of the Contract was responsible and obliged to carry out the services and take all necessary steps to ensure the smooth and timely performance of the services. However, the Petitioner not only provided incomplete services but also provided such incomplete services delayed. On receipt of the delivery of Rigs from the Petitioner, the Respondent Company was supposed to deploy such Rigs at site of Oil and National Gas Corporation Limited (**"ONGC"**). However, as the Petitioner could not deliver the Rigs on time, and accordingly, the Respondent got delayed in deploying the Rigs at ONGC site, which resulted into levy of Liquidated Damages of Rs.11,15,17,157.50 (US $ 15,93,102.25) by ONGC onto the Respondent. The same has been levied solely due to the acts and omissions of the Petitioner. Copy of Liquidated Damages of USD 192081.25 levied by ONGC for the delay in deploying Rig no. 16 is attached as Annexure – H to reply.

xxi. Clause 7.1 of the Contract, provides that Contractor (Petroserve) shall be responsible for the safe transportation of Goods. In case of any shortage and/or damage of goods, the entire cost of such shortage and/or damages, as determined by the Respondent shall be recovered from the Petitioner. The Petitioner has provided very poor quality of services and in a very unprofessional manner by not handling of materials as per adopted practices. The Petitioner has not properly packed the equipment for shipments causing the damage of the same during loading into the ship and during the trans-shipment from Algeria to India. An independent Surveyor and Assessor Mr. Umang S. Ramani, Chartered Engineer, Surveyor & Loss Accessor has submitted a report for Rig no. 26, copy of which is enclosed herewith marked as Annexure-I to reply. Mr. Umang. S. Ramani has reported that as per Ship Master's bill of lading, all equipment was found partially broken, rusty, dented, scratched etc., wooden cases were broken due to weak packaging, bunker houses was deformed on sides, the wood cover of package 5 missing, doors were open in few packages etc. Moreover, other details in respect of the missing/damage caused to other rigs is attached herewith and marked as Annexure J to reply.

xxii. In spite of various requests and reminders, Applicant also failed to return Bank Guarantees to Respondent which were submitted to Algerian Customs for a total amount of 8653765800 DZD till date. Due to this reason the Respondents were not able to present these bank guarantees to bankers for cancellation and Respondent has been forced to pay a heavy amount to keep these BGs alive. Respondent has already paid approximately Rs.53,28,513/-towards renewal charges of these BGs. The Respondent is also not able to get the release of deposit money kept with the banks. Copy of the communication with the list of Bank Guarantees is enclosed herewith and marked as Annexure K. Moreover, vide letter dated 24.04.2020 (Copy at Annexure L) the Illizi Customs authority has held that the said Bank Guarantees have been returned to our authorised representative viz. the Petitioner herein. However, the Petitioner has not returned the same to the Respondent which has resulted in huge loss to the Respondent Company.

xxiii. Therefore, on account of short-delivery/non-delivery, purchase of new material, damaged/stolen/missing material during the transit, levy of LD charges on account of delay in deployment of Rig, bank charges etc., Respondent had to incur loss/cost of Rs.58,74,35,280.09 which is required to be recovered from Applicant as per the terms and conditions of the impugned contracts. Summary of amount to be recovered is tabulated hereunder:-

Particulars	Loss / cost to be recovered from Petroserve Amount in Rs.
Short-Delivery / Non-Delivery / Retained Equipment, Material and Inventory	19,28,72,156.64
Insurance Expense	1,15,723.30
New material purchase on account of Short-delivery/damaged material etc.	27,77,60,593.86
Liquidated Charges	11,15,17,157.50
Damaged / Stolen / missing equipment, material etc.	To be claimed
Report of Surveyor Mr. Umang Ramani of items found missing / stolen / damaged from Rig # 26	To be claimed
Bank Charges	53,28,513/-
Total	**58,74,35,280.09**

Therefore, on the contrary, the Petitioner is indebted to my client and not otherwise.

NOTARY ★ INDIA ★ GOVERNMENT OF
YOGENDRA S. RAJPUT
Reg. No. 5399/08
Ahmedabad
(MY COMMISSION EXP. ON 24-02-2021)

xxiv. In respect of the very same dispute the Petitioner had filed an complaint before the Director General of Foreign Trade inter alia raising concerns in respect of the alleged unpaid invoices. The Respondent had given a detailed reply dated 04.12.2019 (copy at Annexure-M) and in view of the reasons given in the said reply no steps were taken against the Respondent. Moreover, the Respondent has also filed a complaint dated 08.06.2020 (copy at Annexure-N) against the Petitioner before the Addl. Director General of Foreign Trade in respect of the aforementioned breaches committed by the Petitioner and the loss caused to the Respondent due to the said acts and omissions of the Petitioner.

a. The other objections are common petition for different invoices and different contract is not maintainable.

b. The Respondent Corporate Debtor is a going concern and a viable company.

xxv. The Respondent had relied upon the following judgments:

a) Mobilox Innoventions (P) Ltd. vs Kirusa Software (P) Ltd.

Due to the above reasons, the Corporate Debtor seeks dismissal of the application.

20. Rejoinder was filed under Diary No. D461 dated 31.01.2022. In rejoinder, the Operational Creditor states that:-

    i. There is no dispute or protest.

    ii. There are numerous email communications between the parties where the reminders were given for payment and no disputes were raised.

    iii. The Operational Creditor relies again upon the appreciation letters and recommendation letters.

    iv. Mr. Praveen Gautam according to the Applicant was responsible and was in service when the appreciation letters and certificates of recommendation were issued.

    v. The police complaint was filed maliciously.

    vi. The Operational Creditor reiterates that the Auditor appointed by ICICI Bank for the Special Audit of the Corporate Debtor confirmed vide their email dated 07.02.2019 that the book of accounts of the

Corporate Debtor reflects a credit balance under the head Operational Payable of USD 33,20,687.

vii. The Power of Attorney was duly stamped within three months from the date of receipt in India.

viii. The Hon'ble Apex Court in the matter of Macquaire Bank Limited v. Shilpi Cable Technologies Limited had held that a demand notice delivered by an advocate duly instructed by the Operational Creditor would be a valid notice for the purpose of initiation of CIRP and, hence, notice given by the Operational Creditor is a valid notice.

ix. The Operational Creditor was only a service provider and dispatched the materials supplied to them by the supplier of the Corporate Debtor and is neither liable nor responsible for non-delivery or short delivery, if any.

x. The goods were safely transported by the Applicant and for which no grievance was received from the Corporate Debtor.

xi. The counterclaim is an afterthought and is denied.

xii. The Corporate Debtor has suffered losses from the year 2017-18 to the year 2020-21 and thus is not a viable unit as claimed by the Respondent.

xiii. Thereafter, the Applicant has relied upon the following cases:-

a. *Mobilox Innovations Pvt. Ltd. v Kirusa Software (P) Ltd.*
b. *Ahluwalia Contracts (India) Ltd. v. Raheja Developers Ltd. Company Appeal (AT) (Insolvency) No. 703 of 2019*

21. Additional affidavit was filed by the Respondent under Diary No. D4177 dated 23.10.2023 consisting of 917 pages. In the additional affidavit, it is stated that:-

i. The Respondent through its Advocate vide letter dated 29.04.2019 furnished Reply/Notice of Dispute to the Demand Notice dated 09.04.2019 issued by Ardent Legal on behalf of the Applicant. The said Reply/Notice of Dispute along with all annexures are at Annexure II(j) on pg. nos. 212 to 344 of the application filed by the Applicant. In the said Reply /Notice of Dispute, the Respondent had furnished Annexure-A to show the details of retained materials, equipment, and inventories at ANS-BP-757-ZI HASSI MESSAOUD, ALGERIA - the premises of NaftCom (sister concern of the Applicant) for declared value of 330 032 093.07 DZD. (Para 11 at Pg. Nos.219 with Pg. Nos. 228 to 253). In the said Reply/Notice of Dispute, the Respondent had also furnished Annexure - B insurance premium charged by the Algerian Insurance Company on 28.03.2019 for the period 26.03.2019 to 25.03.2020 for the property (i.e., materials, equipment, and inventories) lying at ANS-BP-757-ZI HASSI MESSAOUD, ALEGERIA on declared value of 330 032 093.07 DZD (para 11 at page no. 219 with pg. 254-255). The said insurance premium was paid on 28.03.2019 prior to the issue of demand notice on 09.04.2019.

ii. This additional affidavit was filed in response to the permission granted by this Tribunal vide order dated 28.09.2023.

iii. The Respondent has submitted the following documents to establish that the Applicant has retained the materials, equipment and inventories at the premises of NaftCom (sister concern of the Applicant) on which the Respondent has been paying insurance to Algerian Insurance company till 2023:

(a) List of Equipment Re-Exported to India and Materials lying at Algeria for Rig # 17, Bill of Ladings, Invoices for Re-Export to India, Material Manifest, Material Receipt at **Annexure - A;**

(b) List of Equipment Re-Exported to India and Materials lying at Algeria for Rig # 16, Bill of Ladings, Invoices for Re-Export to India at **Annexure - B;**

(c) List of Equipment Re-Exported to India and Materials lying at Algeria for Rig # 20, Bill of Ladings, Invoices for Re-Export to India at **Annexure - C;**

(d) List of Equipment Re-Exported to India and Materials lying at Algeria for Rig # 26, Bill of Ladings, Invoices for Re-Export to India, Cargo Manifest at **Annexure – D;**

(e) Insurance Policies for the period 2019-20, 2020-21, 2021-22, 2022-23 and 2023-24 for the materials lying at Algeria at premises of NaftCom (sister concern of Applicant) at ANS-BP-757 – ZI HASSI MESSAOUD, ALGERIA at **Annexure – E – Colly;**

(f) Sample Gate Passes/ Challans at **Annexure – F – Colly;**

(g) Chartered Engineers Certificate placed at **Annexure – G**;

(h) Certificate of Chartered Accountant placed at **Annexure – H;**

JOHN ENERGY LTD. AHMEDABAD

iv. The Respondent vide its email dated 23.08.2018 and 05.09.2018 had submitted report of inventory lying at Algeria as at 31.03.2018 for declared value of 330 032 093.07 DZD to SOFIANE OKAT (Pg. nos. 228 to 253 of the application). That SOFIANE OKAT is consultant/agent and was working as an intermediary between the Respondent and the Applicant.

22. The Applicant has responded to the additional affidavit through Inward Diary No. D4949 dated 08.12.2023. In the said document, the Applicant has stated as under:-

   A. Proof of payment of insurance premium does not establish any proof towards the alleged goods being retained or being in custody of the Operational Creditor or not being transported by the Operational Creditor.

   B. The Corporate Debtor has fabricated a false and baseless story.

   C. The Corporate Debtor has failed to establish that goods are still in possession of the Operational Creditor and no complaint was filed with any other authority regarding the alleged retention of goods.

   D. Certificates at Annexure-G and H from Chartered Engineer and Chartered Accountant firms who have been hired by the Corporate Debtor for its own cost, none of the certificates anyhow proof that any good is lying with the Operational Creditor.

E. Sofiane Okat was not acting as an intermediary between the Applicant and the Respondent.

23. Written submissions were filed by the Respondent on 23.01.2024. Despite opportunity, written submissions have not been filed by the Applicant till 07.02.2024.

24. We have heard the various counsels and have perused the documents. The Applicant is a service provider who has transported goods from a port at Algeria to a port in India. The subject matters of the contract are four oil rigs which were exported from India and again re-exported from Algeria to India. It is not in dispute that the Corporate Debtor has availed the services of the Applicant herein for the reasons as stated in the two contracts mentioned hereinabove. It is also not in dispute that certain invoices were issued and they have not been paid by the Corporate Debtor so far.

25. Several disputes have been raised by the Corporate Debtor and a snap shot of the same is captured below:-

A. Alleged appreciation letter and certificate of recommendation issued by one Mr. Praveen Gautam on behalf of the Corporate Debtor being fabricated and for which criminal proceedings are pending.

B. Alleged confirmation issued by Mr. Praveen Gautam dated 19.02.2018.

C. Confirmation of balance is issued by the Auditor.

D. Certain inventories and spares are in possession of the Operational Creditor and for which insurance policy taken by the Corporate Debtor.

E. Complaint filed before the DGFT by both parties.

F. Complaint filed by Corporate Debtor before the concerned police against Mr. Praveen Gautam, Mr. Bhatia and Mr. TaharSouid for forgery which culminated into an FIR dated 06.01.2022 after investigation. Against which CrMA No. 6537 of 2022 are pending before the Hon'ble High Court for quashing.

G. Certificates issued by Chartered Engineer and Chartered Accountant comparing goods exported from India and re-exported to India and certifying that certain materials are lying with the Respondent/its associate of NaftCom.

26. Both parties have field voluminous documents before this Court to establish their respective cases.

27. We have prima facie gone through the various disputes as raised by the Corporate Debtor. As regards the issue of letters of appreciation/recommendation/confirmation the same are all issued by one person Mr. Praveen Gautam and these are on the letterhead of the Corporate Debtor. It is seen that the entire correspondence between the parties was through e-mail except the above letters/confirmations/recommendations. It is also seen that certain criminal proceedings had been initiated by the Corporate Debtor against the said Mr. Praveen Gautam. As such, we cannot rule out the possibility that these confirmation/appreciation/recommendation letters are fabricated at this stage.

28. Alleged confirmation of balance based upon which the Applicant is seeking extension of limitation is between one auditor appointed by a banker to the Corporate Debtor and the Applicant herein. The said confirmation is directly not from the Corporate Debtor but by an auditor by another independent agency who happens to have undergone the books and account of the Corporate Debtor. Hence, in our considered view it cannot be ground seeking extension of limitation.

29. As already explained, the goods involved in the contract were exported from India and were re-exported from Algeria to India. A comprehensive certificate from a Chartered Engineer and Chartered Accountants has been placed by the Respondent herein through the additional affidavit dated 20.10.2023. Through this affidavit, the Respondent has alleged that certain goods have been retained by the Applicant in Algeria and that for which the Respondent has taken insurance. The bank guarantees issued in favour of the customs have been retained in Algeria and further that the Respondent has incurred a cost of nearly Rs.27.77 crores and had to pay

the liquidate damage nearly Rs.11.15 crores to ONGC and for which necessary evidence has been placed on record.

30. As there are claims and counter claims between the parties, enough material has been placed before us raising plausible disputes in the matter, we are constrained to dismiss the present application. Accordingly, **CP(IB) No. 67 of 2021** is hereby dismissed.

31. A certified copy of this order may be issued, if applied for, upon compliance with all requisite formalities.

-SD-	**-SD-**
SAMEER KAKAR	**SHAMMI KHAN**
MEMBER (TECHNICAL)	**MEMBER (JUDICIAL)**

Rajeev/PS