

**BEFORE THE ADJUDICATING AUTHORITY
NATIONAL COMPANY LAW TRIBUNAL
INDORE BENCH at AHMEDABAD
COURT 1**

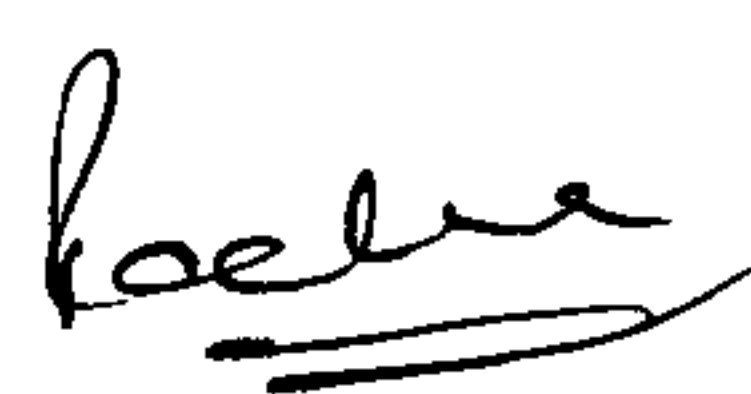
C.P. (I.B) No.203/9/NCLT/AHM/2018

**Coram: Hon'ble Mr. HARIHAR PRAKASH CHATURVEDI, MEMBER (JUDICIAL)
Hon'ble Mr. PRASANTA KUMAR MOHANTY, MEMBER (TECHNICAL)**

**ATTENDANCE-CUM-ORDER SHEET OF THE HEARING OF INDORE BENCH OF
THE NATIONAL COMPANY LAW TRIBUNAL ON 07.02.2020**

Name of the Company: Oriental Coal Corporation
V/s
Bhaskar Foods Pvt Ltd

Section: Section 9 of the Insolvency and Bankruptcy Code

S.NO.	NAME (CAPITAL LETTERS)	DESIGNATION	REPRESENTATION	SIGNATURE
1.	Rachna Pastore	Adv.	Petitioner	
2.				

ORDER

The Petitioner is represented through its Counsel.

The present matter is kept for pronouncement of order today.

The present matter, filed under Section 9 of Insolvency & Bankruptcy Code, i.e., **CP (I.B) No. 203 of 2019**, is rejected.

Detailed order is recorded vide separate sheet.


**(HARIHAR PRAKASH CHATURVEDI)
MEMBER (JUDICIAL)**

Dated this the 7th day of February, 2020

**BEFORE THE ADJUDICATING AUTHORITY
(NATIONAL COMPANY LAW TRIBUNAL)
INDORE BENCH at AHMEDABAD**

C.P. (I.B.) No. 203/9/NCLT/AHM/2018

**Coram: Hon'ble Mr. Harihar Prakash Chaturvedi, Member (Judicial)
Hon'ble Mr. Prasanta Kumar Mohanty, Member (Technical)**

In the matter of:

M/s. Oriental Coal Corporation,
Having its registered office at:
65, East High Court Road,
Ramdaspath, Nagpur-440010,
Maharashtra, India.

.....Petitioner/Operational Creditor

Versus

M/s. Bhaskar Foods Pvt. Ltd.
Office Block 1A, 5th Floor,
DB City, Corporate Park, Arera Hills,
Opp. M.P. Nagar, Zone-1,
Bhopal – 462016,
Madhya Pradesh, India.

.....Respondent/ Corporate Debtor

Appearance:

Ms. Natasha Dhruman Shah, Advocate, for the Petitioner/
Operational-Creditor.

Mr. Narender S.T., Advocate along with Mr. Manu Sainani,
Advocates for the Respondent/ Corporate-Debtor.

Order delivered on 7th February, 2020.

✓



ORDER

[Per: Shri Harihar Prakash Chaturvedi, Member (Judicial)]

1. The present I.B. Petition is preferred by M/s. Oriental Coal Corporation being an Operational-Creditor under Section 9 of the Insolvency and Bankruptcy Code, 2016 read with Rule 6 of the Insolvency and Bankruptcy Rules, 2016 (herein after referred to as a "Code") seeking for initiation of Corporate Insolvency Resolution Process ("CIRP" in Short) in respect of the Corporate-Debtor-Company namely, M/s. Bhaskar Foods Pvt. Ltd. It is stated that the Operational Creditor, M/s. Oriental Coal Corporation is a proprietorship firm of Mr. Animesh R. Agrawal as a Proprietor. The Operational Creditor Company is said to be involved in the business of 'Steam Coal' business. The Operational Creditor is having its registered address at: 65, East High Court Road, Ramdaspath, Nagpur - 440010, Maharashtra, India.
2. It is stated that the Respondent/Corporate Debtor Company, namely M/s. Bhaskar Foods Pvt. Ltd. was incorporated on 18.11.1985 with the CIN: U51109MP1985PTC003141 and appears to be engaged in the business of food products.
3. It is informed that the Corporate-Debtor-Company is having nominal share capital of Rs.16,00,00,000/- (Rupees Sixteen Crores) and the paid-up share capital of the

company is Rs.12,55,75,200/- (Rupees Twelve Crores Fifty Five Lakhs Seventy-Five Thousand Two Hundred). The registered office of the Corporate Debtor Company is situated at: Office Block1 A, 5th Floor, DB City, Corporate Park, Arera Hills, Opp. M.P. Nagar, Zone-1, Bhopal – 462016, Madhya Pradesh, India.

4. It is submitted that the Corporate-Debtor-Company, i.e. M/s. Bhaskar Foods Pvt. Ltd. requested the Operational-Creditor, i.e. M/s Oriental Coal Depot to supply 'Steam Coal,' which was supplied by the Operational-Creditor as per the terms and conditions of the purchase Orders and Invoices. The Petitioner/Operational Creditor started supplying the material ("Steam Coal") to the Respondent in the year 2011-12 and continued supplying till the month of January 2014. It is submitted that the Petitioner has also obtained Goods Receipt Notes for the said supply from the Respondent against each supply/invoice.
5. In support of such, the Petitioner has annexed follwong documents to the present I.B. Petition, viz. –
 - (i) Purchase Orders of the Corporate Debtor dated 29.01.2013, 17.12.2013 and 20.01.2014. Also
 - (ii) email of Corporate Debtor dated 05.08.2015 regarding confirmation of balance outstanding.

(iii) Ledger Account statement of the Respondent, i.e. M/s. Bhaskar Foods Pvt. Ltd. in the books of account of M/s. Oriental Coal Corporation.

(iv) Working for computation of default in tabular form.

6. It is submitted that the Corporate Debtor delayed the payment since its initial supply. It is submitted that the Corporate Debtor made last payment of Rs.10,00,000=00 (Rupees Ten Lakhs only) to the Operational Creditor on **13.01.2016** which was said to be obtained after a rigorous follow-up. It is submitted that thereafter, the Corporate Debtor did not make any payment to the Petitioner/Operational Creditor.
7. It is stated that due to a delay in making payments, the Operational-Creditor started to suffer the shortages of cash flow and working capital. The Operational-Creditor made many efforts for getting payments from the Corporate-Debtor by means of personal visits, verbal and by phone calls. As submitted, the Corporate-Debtor has failed in making balance payments to the Operational-Creditor.
8. It is stated that the Respondent/ Corporate Debtor sent an e-mail, confirming the amount outstanding payable by 31.03.2015 to the Petitioner, which was received by the Petitioner on 05.08.2015.

9. It is also stated that due to non-payments, the Petitioner/ Operational Creditor, Mr. Animesh R. Agrawal, himself in the capacity of Director has personally visited and started to make follow-up for payments. It is submitted that even after such efforts, the Respondent did not clear his dues.
10. Hence, the Petitioner / Operational Creditor was compelled to issue a demand notice to the Respondent, which was issued on 12.03.2018 in the prescribed Form-3, under the provisions of Insolvency and Bankruptcy Code, 2016. A copy of the same has been annexed by the Petitioner along with the present I.B. Petition.
11. It is submitted that the said demand notice was served at the Registered Office of the Corporate-Debtor, sent via speed post on 21.03.2018 and delivered on 31.03.2018. The acknowledgement of speed post is also annexed with the present I.B. Petition. A copy of notice was also sent at the Branch office of the Corporate-Debtor as well as to all the present directors of the Corporate-Debtor-Company.
12. As submitted in the present I.B. Petition, the total amount claimed to be in default is to the tune of Rs.46,95,033=00 (Rupees Forty-Six Lakh Ninety-Five Thousand Thirty-Three only) as on 10.03.2018. Out of which,

a. Rs.18,31,644=00 (Rupees Eighteen Lakh Thirty-One Thousand Six Hundred Forty-Four only) is the amount receivable towards the issued invoices.

b. Rs.28,63,389=00 (Rupees Twenty-Eight Lakh Sixty-Three Thousand Three Hundred Eighty-Nine only) is the amount receivable towards the interest on delayed payments outstanding on issued invoices.

13. The Respondent/ Corporate Debtor, i.e. M/s. Bhaskar Foods Private Limited has submitted 'Objection-in-Reply' in this bench on 01.10.2018 in support of its contentions by denying the objections raised by the Petitioner/ Operational Creditor.

14. It is stated by the Respondent that the Petitioner has submitted untrue facts and suppressed the correct facts. It is contended that the instant petition suffers from ***Suggetio-falsi and Suppresso-Veri*** and deserves to be dismissed.

15. In reply to the present I.B. Petition the Corporate-Debtor has filed its reply stating that he had long term business relationship with the Operational-Creditor. Earlier, it procured goods for one of its unit and never had any issues with the quality. Earlier, whenever, the quality was poor,

the Corporate-Debtor used to inform the Operational-Creditor verbally, raised debit notes and resolved the issues.

16. It is averred that during the F.Y. 2013-14, the Petitioner/Operational-Creditor supplied much deteriorated quality of coal against certain purchase orders (POs). The Respondent's request to replace the coal was totally ignored by the Petitioner. Although, it is stated that the payments for such orders were not stopped by the Respondent. It is stated that the Respondent was thereafter compelled to reject the coal.

17. It is averred by the Respondent/Corporate-Debtor that due to such poor quality of goods/coal supplied to its units, its company had suffered a huge losses. It is also averred that the goods was also not supplied within some stipulated time.

18. The Respondent/Corporate Debtor, in support of its contentions of poor quality of supplied goods/coal, has obtained a quantitative 'Coal Analysis Report' from a certified lab and annexed to the present reply.

19. It is averred that the Corporate Debtor released Rs.42.50 Lakh during the period Jan-14 to March-15. Also, it is

stated that finding no improvement in the quality of goods, the Corporate Debtor generated **a debit note** of Rs.17,59,286=00 (Rupees Seventeen Lakh Fifty-Nine Thousand Two Hundred Eighty-Six only) for rejected quantity of 312.775 Metric Tonnes on 16.11.2015. After raising such debit note, the outstanding remained for Rs.10,72,358=00 (Rupees Ten Lakh Seventy-Two Thousand Three Hundred Fifty-Eight only). It is further stated that the Petitioner/Operational Creditor, upon follow-up and confirmation, has agreed to, and a lump sum amount of **Rs.10 Lakh was paid by the Respondent/ Corporate-Debtor by RTGS on 12.06.2016. Thus, the balance outstanding in the account stands to Rs.72,358=00 which, as per the Respondent, he is agreed to pay as full and final amount.**

Observations/Findings:

20. We have gone through the contents of the I.B. Petition as well as reply filed by the Corporate Debtor by opposing the admission of the present petition. The Respondent/Corporate Debtor has also produced additional documents with a permission of this court in support of its objection. The Respondent Counsel has appraised of /informed to this Court that the Respondent Company has now become defunct, as its plant has already been sold out and thus the company at present is not active.



21. Contrary to this, the Ld. Counsel for the Petitioner furnished master data of the company, available on the web portal of the Ministry of Corporate Affairs, wherein, the status of the company has been shown as active company.
22. The Corporate Debtor in its additional document has filed debit note dated 16.11.2015, which shows that such debit note has been revised for an amount of Rs.17,59,286=00 (Rupees Seventeen Lakh Fifty-Nine Thousand Two Hundred Eighty-Six only) has made towards the coal purchased/deduction on account of inferior quality of 312.775 MT coal supplied during January 2014 to March 2014.
23. That apart, the Corporate Debtor also furnished **a copy of the coal analysis report** which reflects that, goods in question, which are subject matter of the present I.B. Petition were of the inferior quality. Such test of the coal supplied was carried out on date 06.01.2014, which evidents that there was some "Pre-Existing-Dispute" between the Petitioner/Operational Creditor and Corporate Debtor with regard to inferior quality of coal supplied and also on the issue of limitation on filing the present I.B. Petition.

24. The Corporate Debtor in its objection has stated that he has already made payment of balance amount as per the price of the goods supplied and having discounted the amount of debit note for rejected quantity of 312.775 MT of coal as on 16.11.2015. The Corporate Debtor has paid Rs.10=00 Lakhs through RTGS on 12.06.2016 and the remaining balance amount shows in it account is only Rs.72,358=00 which, the Corporate Debtor is ready to pay as a full and final settlement. Such amount could not be paid, as the Corporate Debtor was disputing the price of the coal supplied or the debit note issued and amount of **Rs.10=00 Lakh** towards the full and final settlement.

25. Hence, we find that there exists a pre-existing dispute prior to the issuance of the demand notice as the demand notice was issued on 12.03.2018.

26. That apart, the Petitioner, itself in 'Part-4', Column 1(b) about the payment received have pleaded that the Corporate Debtor made quite delayed payment and last payment received of Rs.10=00 Lakh and this payment was also received **after a rigorous follow up by the Operational Creditor.**

27. And after that, the Corporate Debtor did not make even a single payment of the Operational Creditor. While the

version of the Corporate Debtor is quite different. The Corporate Debtor substantiate his contentions by filing a copy of debit note and stated inter alia that as per the debit note as well as coal test report, such payment towards full and final payment after deducting the debit note and revising the price for quality and quantity of the coal supplied has been paid and there is remaining balance of Rs.72,358/-, which is less than rupees one lakh. Hence, the Corporate Insolvency Resolution Process cannot be triggered in respect of the Corporate Debtor Company.

28. Hence, in our humble view, it is debatable issue which reflects that there was some difference and pre-existing dispute among a parties about the quality of material supplied and about the nature of payment made and such disputed payment paid or received, does not necessarily fall within the definition of an Operational Debt because as per the Corporate Debtor, it is a made only entire price of the goods supplied remaining amount of Rs.72,358=00 and subject to full and final settlement. Such undisputed Rs.72,358=00 is out of purview of the I.B. Code, as the CIRP can be triggered when the debt is established and default occurred and is more than Rs.1=00 Lakh, which is not a case here.

K



29. We also placed reliance on the decision of the Hon'ble Supreme Court, in the matter of **Mobilox Innovations Vs. Kirusha Software** examined the issue and stated that the I.B. Code is not meant for enforcement or for recovery of the debt and it is the aim and object to bring a resolution for a Corporate Debtor Company and not otherwise and even the defence taken by the Corporate Debtor is bona-fide then, it is for the competent court of law to decide the same and the CIRP cannot be triggered by this Court until and unless such defence is a spurious and feeble which is not the case here because the Corporate Debtor has furnished debit note as well as copy of the test report and shown bonafiedly for making payment of Rs.10=0 Lakh as undisputed balance amount of Rs.56,000=00 which are debatable issue, that can be challenged only in competent civil or further competent civil forum and not to be examined within the purview of the I.B. Code.

30. That apart, it is also stated that the company has now become defunct and its machinery and plant has already been sold out and disposed. Hence, even if the CIRP is triggered, there are remote possibilities to bring a viable resolution for the revival of the company which is the aim and main theme of the present I.B. Petition.


31. In view of the above, the present petition is not maintainable on the ground of pre-existing dispute.

32. Further, the payment received on 13.01.2016 from the Corporate Debtor cannot be treated as a debt liability and as part payment because the Corporate Debtor has stated it as almost entire payment towards the goods supplied on actual price, basis on the quality of goods supplied. The remaining balance is Rs.72,358=00 which is less than rupees one lakh.

33. Hence, the present application also appears to be filed beyond three (03) years, i.e. prescribed period of limitation to entertain this petition, hence, on this account also, this I.B. Petition must fail.

34. In the light of above discussion, we are of the view that the present petition is liable to be rejected on the ground of 'Pre-existing Dispute' mainly. Hence, accordingly it is dismissed.

No order as to cost.


(Harihar Prakash Chaturvedi)
Adjudicating Authority &
Member (Judicial)

[Per: Hon'ble Mr. Prasanta Kumar Mohanty, Member (Technical)]

CP(IB) No. 203/9/NCLT/AHM/2018

Oriental Coal Corporation

V/s

M/s. Bhaskar Foods Private Limited

[Per se: Mr. Prasanta Kumar Mohanty, Member (T)]

The Present I.B Petition CP(IB)No.203/9/2018 is filed by the Proprietor Shri Animesh R. Agarwal seeking for Corporate Insolvency Resolution Process ("CIRP" in Short). While **perusing** this I.B. Petition, **it is observed that:**

1. Oriental Coal Corporation filed a petition against M/s. Bhaskar Foods Private Limited on **09/05/2018** for initiation of CIRP for the Claim amount of **INR.18,31,644.00** invoice value + 2% Per Month Interest as per invoice of **INR.28,63,389.00 (Total INR.46,95,033.00)**. On the request of the Corporate Debtor, the Operational Creditor supplied Steam Coal to the Corporate Debtor as per Purchase Order(s). All Invoices, Delivery Challans, Truck No. through which Coal supplied have been annexed. The Corporate Debtor paid all payment except 5 invoices with Principal Amount of INR.18,31,644.00 + INR.28,63,389.00, 2% Per Month Interest as per Invoice (Total INR.46,95,033.00).
2. **13/03/2018** – Demand Notice (Form No.3) issued by the Operational Creditor to the Corporate Debtor as per Order Sheet.

✓

3. 09/07/2018 – The Corporate Debtor **refused to receive** the Notice from the Operational Creditor.
4. 01/08/2018 – The Operational Creditor filed proof of service of notice upon the Corporate Debtor before this Adjudicating Authority. Ld. Lawyer of the Corporate Debtor did not appear. Adjudicating Authority decided to start proceeding on 23.08.2018.
5. 23/08/2018 – Corporate Debtor's Lawyer appeared and undertook to file Vakalatnama and Objections.
6. 27/11/2018 – Corporate Debtor Lawyer wanted adjournment in presence of Petitioner's Counsel who opposed the adjournment. However, in the interest of justice, the time was granted.
7. 08/01/2019 – Ld. Lawyer appearing on behalf of Respondent requested for some time as arguing counsel **not available**. Operational Creditor's Lawyer objected.
8. 28/02/2019 – Corporate Debtor wanted to file some additional documents. Cost of INR.2000.00 was imposed on Corporate Debtor. Operational Creditor's Lawyer objected for additional document and final document.
9. **15/03/2019** – Operational Creditor's lawyer present. Respondent's lawyer was not present on **repeated calls**, but signature on attendance sheet was there. Matter Adjourned to 08.04.2019.

10. **08/04/2019** – Ld. Lawyer appearing on behalf of the Corporate Debtor informed the Court that Corporate Debtor Company has been sold as of now and the Corporate Debtor Company is not in existence. Corporate Debtor wanted to file some documents. Matter adjourned to 27/05/2019.
11. 27/05/2019 – Corporate Debtor filed some documents which contained one letter reportedly written by Corporate Debtor to Maharashtra State Electricity Board on 26/06/2018 to delete their name as Industry.
12. 14/08/2019 – Final Hearing took place.

Rejection:

13. **As Observed, now the Hon'ble Member (J) wants to reject the above application filed on the following grounds:**

- 13.1 **Pre-existing Dispute:**

Corporate Debtor admitted dues of INR 28,31,644.00 against which Corporate Debtor raised a debit note of INR 17,59,286.00.

- 13.2 Corporate Debtor paid INR.10,00,000.00 through RTGS (Bank account of the Operational Creditor) on 13/01/2016 and amount left over is only Rs.72,358.00 which is below Rs.1.00 Lakh. Hence, petition not to be admitted.

- 13.3 The Petition is to be rejected on Limitation ground.

Difference of Opinion:

However, on perusal of the documents submitted by the parties, Order Sheets of this Adjudicating Authority and arguments of both Lawyers, **I am of the Opinion that this is a fit case to be admitted** on account of the following points which are required to be complied with for admission of a petition under section 9 of Insolvency and Bankruptcy Code, 2016.

1. All bills and delivery challans with truck numbers submitted by the Operational Creditor **have been accepted** by the Corporate Debtor.
2. Corporate Debtor was refusing to receive notice of Operational Creditor (Form No.3), however, subsequently appeared before this Adjudicating Authority and the entire proceedings from 12/03/2018 to 14/08/2019 show that Corporate Debtor was avoiding appearance and seeking adjournments of the case.
3. On 08.04.2019 Corporate Debtor's Lawyer reported that the Corporate Debtor Company has already been sold and now not in existence. It is a very serious issue that Corporate Debtor Company is sold during the application pending disposal. Moreover, sale of the Company by the Corporate Debtor **does not confer any right on the Corporate Debtor NOT TO PAY the dues of Operational Creditor.**
4. Pre-Existing Dispute - The Corporate Debtor has made all attempts to **create impression of pre-existing dispute** by

submitting a **plain one-page paper** dated 16/11/2015 as **debit note. It does not contain** any specific reference of Invoice. Proof of delivery of this **debit note** to Operational Creditor has not been submitted. It is a clear case of Moon shine defence being taken by the Corporate Debtor. The same plain sheet has only been submitted to this Adjudicating Authority on 27/06/2019. Hence, this piece of paper needs to be rejected and not to be accepted **as a pre-dispute**. Hence, petition **cannot be rejected on this ground/Moon Shine defence**.

5. **Limitation:** The Corporate Debtor has been constantly acknowledging unpaid Operational Dues of the Operational Creditor. The Corporate Debtor has acknowledged its dues to Operational Creditor on **03.04.2014 in response to the letter of Operational Creditor as on 31.03.2014** by signing **the debt** (Page No.30-32 of the Paper book). The Corporate Debtor has confirmed itself as they have paid **INR.10,00,000.00 to the Operational Creditor as part payment of unpaid dues through RTGS HDFC Bank Account of the Operational Creditor on 13.01.2016**. Operational Creditor has acknowledged the receipt of **INR.10,00,000.00** by enclosing its bank statement (Page No. 117 of the Petition) which clearly shows that Corporate Debtor **M/s. Bhaskar Foods Private Limited** has paid **INR.10,00,000.00** on 13.01.2016. **Hence, the limitation**

period is extended to 16.01.2019 when the petition has been filed on **09.05.2018** which is within 3 years. Hence, the petition **cannot be rejected on the ground of Limitation.**

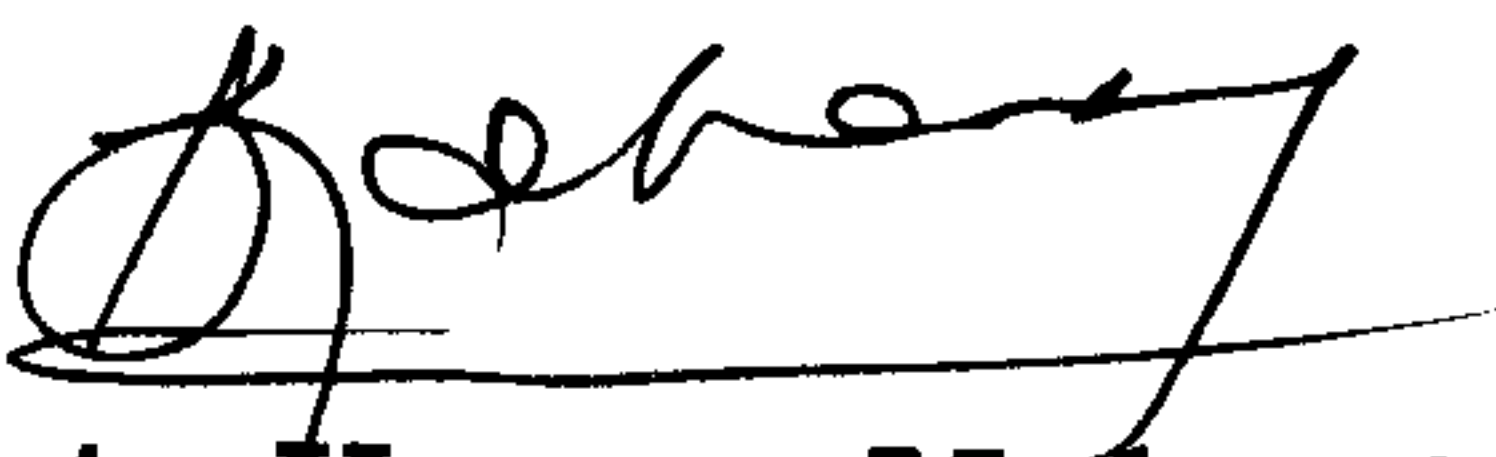
6. Amount left over is INR.72,358.00 i.e. below INR.1.00 Lakh. As per IBC, the amount due will be considered taking into account **both the Principal and interest** and NOT PRINCIPAL AMOUNT ONLY. In all the invoices, it is clearly written **that interest** at the rate 2% will be charged **per month for the delay** in payment **which has been accepted** by the Corporate Debtor. Accordingly, the Operational Creditor has claimed **INR.28,63,389.00** as **delayed period interest** as per calculation sheet page no.19 of paper book of the petition. How can the Corporate Debtor forget to pay the delayed period interest? Adjudicating Authority **does not have any discretion to overlook the interest dues** of INR.28,63,389.00 in IBC Petition filed and reject the petition on the ground that amount of Principal Dues is only INR.72,358.00. Hence, it is clear that this Petition is a fit case for admission.

Further the Hon'ble Member(J) has not sent the Draft to the undersigned before placing it for pronouncement.

However, in spite of the points mentioned above and if the Member(J) opines that this petition is to be rejected, then the

✓

Dy. Registrar is directed to refer the petition along with the related papers and the above observations for constituting a separate Bench for disposal of the case.


(Prasanta Kumar Mohanty)
Member (T)

Dated this the 07th day of february, 2020