

NATIONAL COMPANY LAW APPELLAT TRIBUNAL, NEW DELHI

Company Appeal (AT) (Insolvency) No.140/2018

(Arising out of Order dated 21.02.2017 passed by the Adjudicating Authority (National Company Law Tribunal), Ahmedabad Bench, Ahmedabad in in the Insolvency Petition being C.P.(IB) No.200/7/NCLT/AHM/2017)

In the matter of:

Pravinbhai Raninga
Plot No.12, Manichandra V-1,
Opp Avishkar Bungalows,
Thaltej, Ahmedabad-380057

Appellant

Versus

1. The Kotak Resources,
Navsari Building, 1st Floor,
240, dr. D.N. Road,
Fort, Mumbai-400001.

2. M/s Raninga Ispat Private Limited,
Plot No.12, Manichandra V-1,
Opp Avishkar Bungalow,
Thaltej, Ahmedabad-380057
Through Resolution Professional

Respondents

Present:

For Appellant: Mr. Harin P Raval, Senior Advocate alongwith Mr. Jayant Mehta, Mr Mohit D. Ram, Ms Monisha Handa, Mr. Nipun Saxena and Mr.Sajal Jain, Advocates.

**For Respondents: Mr Rajesh Parikh, Mr. Bhaskar Singh, Ms Dharita Malkan, Advocate for Respondent No.1
Mr. Utkarsh Tiwari and Mr.Alok Kumar, Advocates for Respondent No.2.
Ms Neha Naik, Advocate for Intervener.**

J U D G M E N T**SUDHANSU JYOTI MUKHOPADHAYA, J**

The appellant has challenged the order dated 21st February, 2017 passed by the Adjudicating Authority (National Company Law Tribunal), Ahmedabad Bench, Ahmedabad whereby and whereunder the application under Section 7 of the Insolvency & Bankruptcy Code, 2016 (hereinafter referred to as 'I&B Code') preferred by the respondent, 'The Kotak Resources', against the Corporate Debtor, 'M/s Ranianga Ispat Pvt Ltd,' has been admitted.

2. The main plea taken by the appellant is that the material produced by respondent is not sufficient to record satisfaction of default.

3. Learned Senior Counsel appearing on behalf of the appellant submitted that the 'pledge agreement' cannot be relied upon being doubtful. No other document was filed to show disbursement of any further amount of Rs.50 lakhs (Rupees Fifty lakhs only) except a sum of Rs. 50 lakhs (Rupees Fifty lakhs only) which was initially given. Neither the Bank statement nor ledger or any receipt or any acknowledgement or balance sheet or any other document was filed in support of the claim.

4. It was further submitted that the 'Corporate Debtor' has fully paid the initial loan of Rs.50 lakhs through banking channel. In support of such claim the copy of the ledger have been enclosed at Page 234 and the Bank Statement has been enclosed at Page 278-285. It was submitted that the receipt of Rs.50 lakhs (Rupees Fifty lakhs only) has not been denied by the Respondent. It was further submitted that 'assignment deed' was a self-contradictory and

fabricated document, which can not be treated as a document of disbursal. It was also not signed by 'Navis Multi Trade Private Ltd' (hereinafter referred to as 'Navis').

5. Learned Senior Counsel for the appellant submitted that the Corporate Debtor made payment to 'Navis' for purchase of Iron Ore. 'Navis' could not arrange to supply Iron Ore to 'Corporate Debtor'. Therefore, Navis returned back the amounts to the 'Corporate Debtor'. Bank statements produced evidencing both the transactions. The appellant produced ledger accounts for the period from 1st April, 2011 to 31st March, 2014 to suggest that there is no outstanding dues of appellant payable to the respondent. On the contrary, according to appellant the 'Corporate Debtor' is entitled to recover a sum of Rs.4,27,000/- (Rupees Four lakhs twenty seven thousand only) which has not been disputed by the respondent.

6. Learned senior counsel for the 3rd respondent submitted that the amount lent to appellant is 'financial debt', as defined under Section 5(8) of the I&B Code. There is a tripartite arrangement between the Respondent (M/s Kotak Resources), 'Navis' and the Corporate Debtor (Rananga Ispat Pvt Ltd). Pursuant to this arrangement, the 'Corporate Debtor' borrowed a sum of Rs.1 crore (Rupees One crore). Reliance was also placed on 'Pledge Agreement' dated 5th September, 2012; three cheques given by Corporate Debtor towards security of the principal amount of borrowing and Notice dated 16th September, 2017 issued by Respondent, to which there no reply was given by the Corporate Debtor. It was also submitted that the amount of Rs. 1 crore (Rupees One Crore only) was lent to the 'Corporate Debtor' and 'Clause E' of the 'Pledge Agreement' contains acknowledgement that Corporate Debtor has received Rs.50 lacs (Rupees Fifty lakhs only) on 5th July, 2012. The agreement also records that a further sum of Rs.50 lacs (Rupees Fifty lacs only) in two instalments were to be given to the 'Corporate Debtor'. Rs.50 lacs (Rupees

Fifty lacs only) which was lent on 5th July, 2012 carried a fixed interest of Rs. 2.67 lacs (Rupees Two lacs and sixty seven thousand only) to be paid by 10th September, 2012. Further, according to learned counsel for 3rd respondent in terms of 'Clause K' a further interest @ 6% was payable by 1st October, 2012.

'FINDING'

7. Normally the Adjudicating Authority is not required to go into the claim or counter claim MADE BY THE PARTIES except to find out whether the record is complete or not and whether there is a 'debt' and default committed by the Corporate Debtor.

8. In '**Innoventive Industries Ltd Vs ICICI Bank**' (2018) 1 SCC 407 the Hon'ble Supreme Court held as follows:

"28. When it comes to a financial creditor triggering the process, Section 7 becomes relevant. Under the explanation to Section 7(1), a default is in respect of a financial debt owed to any financial creditor of the corporate debtor-it need not be a debt owed to the applicant financial creditor. Under Section 7(2), an application is to be made under sub-section (1) in such form and manner as is prescribed, which takes us to the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016. Under Rule 4, the application is made by a financial creditor in Form 1 accompanied by documents and records required therein. Form 1 is a detailed form in 5 parts, which requires particulars of the applicant in Part I, particulars of the corporate debtor in Part II, particulars

of the proposed interim resolution professional in Part III, particulars of the financial debt in Part IV and documents, records and evidence of default in Part V. Under Rule 4(3), the applicant is to dispatch a copy of the application filed with the adjudicating authority by registered post or speed post to the registered office of the corporate debtor. The speed, within which the adjudicating authority is to ascertain the existence of a default from the records of the information utility or on the basis of evidence furnished by the financial creditor, is important. This it must do within 14 days of the receipt of the application. It is at the stage of Section 7(5), where the adjudicating authority is to be satisfied that a default has occurred, that the corporate debtor is entitled to point out that a default has not occurred in the sense that the “debt”, which may also include a disputed claim, is not due. A debt may not be due if it is not payable in law or in fact. The moment the adjudicating authority satisfied that a default has occurred, the application must be admitted unless it is incomplete, in which case it may give notice to the applicant to rectify the defect within 7 days of receipt of a notice from the adjudicating authority. Under sub-section (7), the adjudicating authority shall then communicate the order passed to the financial creditor and corporate debtor within 7 days of admission or rejection of such application, as the case may be.”

9. As per decision of the Hon'ble Supreme Court, the 'Corporate Debtor' is entitled to point out that a 'default' has not occurred in the sense that "debt", which may also include a disputed claim, is not due. A 'debt' may not be due if it is not payable **in law or in fact**. Therefore, it is open to the 'Corporate Debtor' or its Directors to point out that the 'debt' is not payable by Corporate Debtor in law and also and/or in fact.

10. Based on the aforesaid principle we have noticed the submission made on behalf of the parties and documents filed by them to find out whether the allegation of the appellant that there is no 'debt' due from the 'Corporate Debtor' or a 'debt' is not payable in law and in fact is correct or not.

11. The 1st Respondent (financial creditor) has relied on 'Deed of Assignment' of Debt dated 25th October, 2017 purported to have been signed between Mr Navis Multitrade Pvt Ltd and Kotak Resources. The relevant portion of the which reads as follows:

"DEED OF ASSIGNMENT OF DEBT

THIS DEED OF ASSIGNMENT is made at Mumbai on this 25th day of October, 2017 between Mr. Navis Multitrade Private Limited, having its registered office at B-302, West View, 117, Bajaj Road, Vile Parle (W), Mumbai-40056, hereinafter referred to as 'the Assignor' of the one part and Kotak Resources, Proprietary concern, having its office at Navsari Building, 1st floor, 240, Dr. D.N. Road, Fort, Mumbai-400 001, hereinafter referred as 'the Assignee' of the other part:

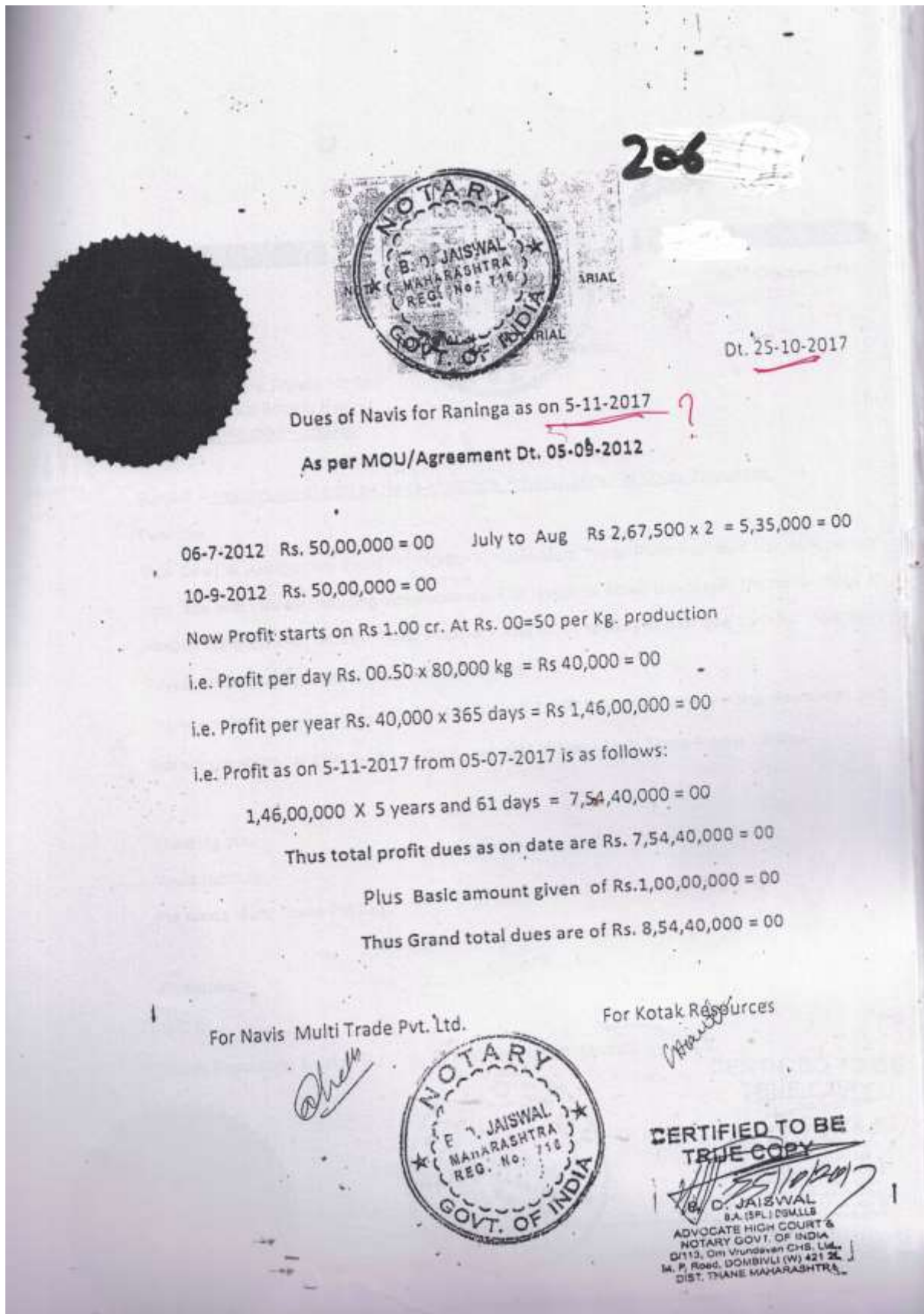
WHEREAS

1. The Assignor and Assignee have entered into Memorandum of Understanding (MOU) dated 05.07.2012 whereby Assignee lent Rs.50,00,000/- to Assignor whereby Assignor was to trade in Pig Iron (Enclosure-1).

2.The Assignor with the consent of Assignee lent above referred amount to Raninga Ispat Private Limited having its Registered Office at 17 Manichandra Society Part-1, Thaltej Ahmedabad-380059 (hereinafter referred to as 'Raniga') as Raninga is engaged in manufacturing and trading of Foundry Grade Pig Iron."

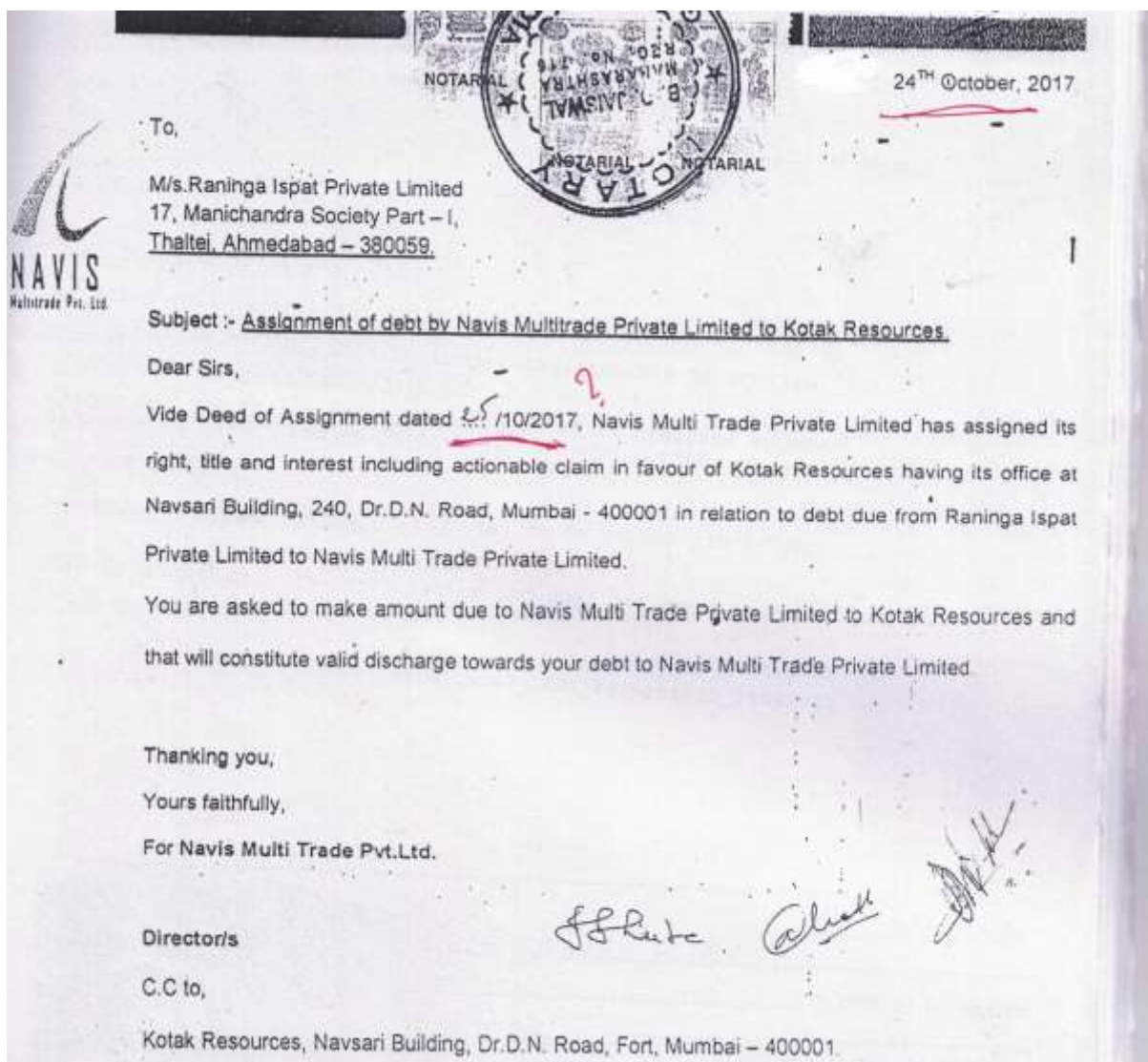
"4. Assignee transferred Rs.50,00,000/- on 06.07.2012. Rs.28,00,000/- on 08.09.2012 and Rs.22,00,000/- on 10.09.2012 to Assignor and Assignor transferred Rs.20,00,000/- on 07.07.2012, Rs.25,00,000/- on 10.09.2012 and Rs.22,00,000/- on 13.09.2012 to Raninga. Assignor also supplied material for an amount of Rs.33,00,000/- to Raninga and till date no grievance is lodged by Raninga with respect to deficiency, if any, with respect to consideration of Rs.1,00,00,000/- as debt towards Assignor;"

The enclosures to the 'Deed of Assignment' dated 25th October, 2017 has been enclosed which shows the dues of Navis for Raninga as on 5.11.2017 and is as follows:



It has not been made clear as to how in the Agreement dated 25th October, 2017, the dues of 'Navis' for the period upto 5.11.2017 has been calculated. The enclosures, as noticed above shows the 'Deed of Assignment' of Debt is 25th October, 2017, whereas the dues of 5th November, 2017 has been written therein. The 1st respondent has failed to explain as to how the subsequent date of 5th November, 2017 has been taken note in a document executed on 25.10.2017.

12. There is another glorious example i.e. the letter dated 24th October, 2017 written by 'Navis' to 'Raninga' which is at next page to the 'Deed of Assignment' and produced by the 1st Respondent before the Adjudicating Authority which is as follows:



13. From the aforesaid document it is not clear as to how in the letter dated 24th October, 2017, the 1st respondent referred the 'Deed of Assignment' of subsequent date i.e. 25th October, 2017.

234

RANINGA ISPAI PVT. LTD.
12, Manichandra Society Part I,
Nr. Surdhara Circle, Thaltej,
Ahmedabad

Navis Multi Trade Pvt. Ltd.
Ledger Account
B/302, West View,
117, Bajaj Road,
Vile Parle (West)
Mumbai

1-Apr-2011 to 31-Mar-2014

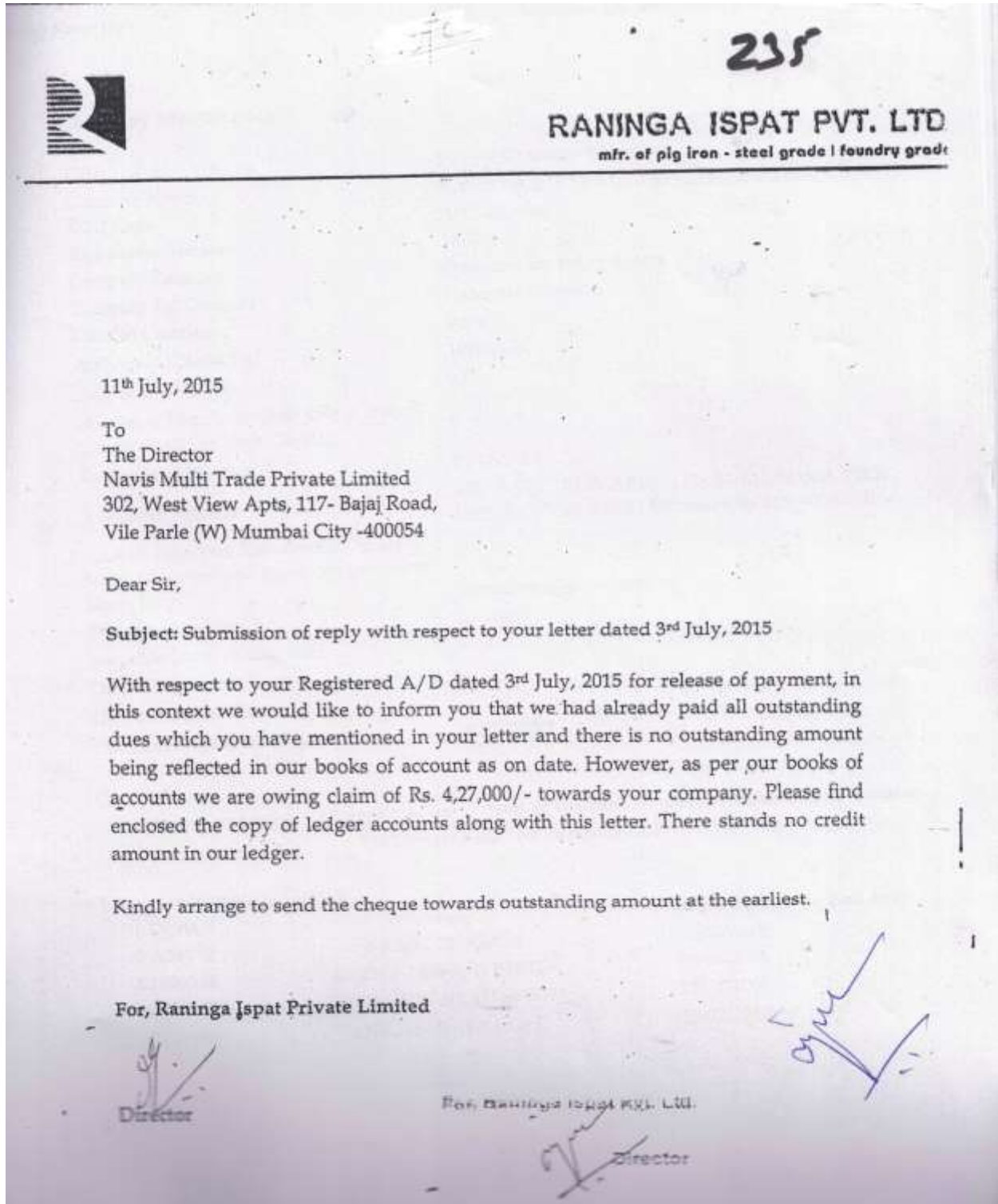
Date	Particulars	Vch Type	Vch No.	Debit	Credit
26-12-2011	To Dena Bank - 057111011105	Payment	834	21,00,000.00	
5-1-2012	To Corporation Bank -146	Payment	881	10,00,000.00	
15-2-2012	To Karur Vysya Bank (1132)	Payment	926	22,00,000.00	
				53,00,000.00	
	By Closing Balance				53,00,000.00
				53,00,000.00	53,00,000.00
1-4-2011	To Opening Balance			53,00,000.00	
28-6-2012	To Dena Bank - 057111011105	Payment	175	11,00,000.00	
	To Cash	Payment	176	4,00,000.00	
7-7-2012	By Dena Bank - 057111011105	Receipt	27		20,00,000.00
28-8-2012	To Dena Bank - 057111011105	Payment	248	2,00,000.00	
4-9-2012	To Dena Bank - 057111011105	Payment	258	67,000.00	
10-9-2012	By Dena Bank - 057111011105	Receipt	47		25,00,000.00
13-9-2012	By Dena Bank - 057111011105	Receipt	48		22,00,000.00
18-11-2012	To Cash	Payment	321	25,000.00	
24-12-2012	To Cash	Payment	330	35,000.00	
				71,27,000.00	67,00,000.00
	By Closing Balance				4,27,000.00
				71,27,000.00	71,27,000.00

To revert to
By
Raninga

For, Raninga Ispai Pvt. Ltd.
[Signature]
Director

14. The appellant has enclosed the document (at Page 234) to show that the sum of Rs.50 lakhs (Rupees Fifty lakhs only) has already been paid which has been incorporated in the Balance Sheet dated 1st April, 2011 to 31st March, 2014. The payment through Bank account in favour of the 'Navis' has been shown therein as follows:

15. The letter dated 11th July, 2015 written by the 'Corporate Debtor' to the 'Navis' shows that there is no outstanding dues of the 'Navis'. On the other hand, the 'Corporate Debtor' has claimed a sum of Rs.4,27,000/- (Rupees Four lakhs twenty seven thousand only) payable by the Respondent, which has not been disputed. The letter is as follows:



16. There is nothing on record to suggest that after payment of Rs.50 lacs (Rupees Fifty lakhs only) in the initial stage another sum of Rs.50 lakhs (Rupees Fifty lakhs only) was paid by the Respondent to make a total amount of Rs.1 crores (Rupees One crore only). In absence of any evidence of grant of further sum of Rs.50 lacs (Rupees Fifty lakhs only), it cannot be treated that a sum of Rs.1 crore (Rupees One crore) was paid by 'Navis' to the 'Corporate Debtor'.

17. With regard to payment of Rs.50 lacs (Rupees Fifty lakhs only) at initial stage, we have noticed that the such amount has already been repaid by 'Corporate Debtor' through cheques, as discussed and noted above.

18. In view of aforesaid record we hold that the appellant has made out a case that the default has not occurred in the sense that the "debt", which also includes a disputed claim, is not due and is not payable by Corporate Debtor to the Respondent in law as also in fact.

19. As the 'Adjudicating Authority' has failed to notice the aforesaid facts and records are doubtful, in view of the different dates which has been mentioned therein and the 1st Respondent has failed to explain as to how in letter dated 24th October, 2017 reference of agreement of subsequent dated 25th October, 2017 has been given or as to how in the agreement dated 25th October, 2017, amount due as on 5th November, 2017 has been shown, the impugned order cannot be sustained.

20. For the reasons recorded above we have no option but to set aside the impugned order dated 21st February, 2017 passed by the Adjudicating

Authority (National Company Law Tribunal), Ahmedabad Bench, Ahmedabad, which is accordingly set aside.

21. In effect, order(s) passed by the Adjudicating Authority appointing 'Resolution Professional', declaring moratorium and all other order(s) passed by the Adjudicating Authority pursuant to impugned order and action taken by the 'Resolution Professional', including the advertisement published in the newspaper calling for applications and all such orders and actions are declared illegal and are set aside. The application preferred by the 1st Respondent under Section 7 of the I&B Code is dismissed. Learned Adjudicating Authority will now close the proceeding. The Corporate Debtor is released from all the rigour of law and is allowed to function independently through its Board of Directors' from immediate effect.

22. The appeal is allowed with aforesaid observations and directions. No cost.

(Justice S.J. Mukhopadhaya)
Chairperson

(Justice Bansi Lal Bhat)
Member (Judicial)

New Delhi

Dated: 29th August, 2018

Bm