

**IN THE NATIONAL COMPANY LAW TRIBUNAL
COURT NO. 5, MUMBAI BENCH**

C.P. (IB) 1144/MB/2019

Under Section 8 & 9 of the IBC,
2016

In the matter of

Associated Chemical Corporation

A-29, Ground Floor, Antophill
Warehousing Complex, Vidyalkar
College Marg, Wadala (East),
Mumbai- 400037

... Petitioner

v/s

Mudra Denim Private Limited

Gala No. 305, Wellington Business
Park, Building No. 2, Andheri Kurla
Road, Andheri (East), Mumbai,
Maharashtra- 400099

... Corporate Debtor

Order Delivered on: 10.08.2020

Coram: Hon'ble Smt. Suchitra Kanuparthi, Member (Judicial)

Hon'ble Shri Chandra Bhan Singh, Member (Technical)

For the Petitioner : Adv. Reshant Shah, Adv. Mayuri Somaiya

For the Corporate Debtor: Adv. Shyam Kapadia, Adv. Akshay Doctor,
Adv. Sunil Purohit, Adv. Sakshi Dube, Adv.
Hridhay Khurana

Per: Suchitra Kanuparthi, Member (J)

ORDER

1. This Company Petition No. 1144 of 2019 is filed by **Associated Chemical Corporation** (hereinafter called "Petitioner") seeking to

set in motion the Corporate Insolvency Resolution Process (CIRP) against **Mudra Denim Private Limited** (hereinafter called "Corporate Debtor") alleging that Corporate Debtor committed default in making payment of Rs. 96,32,473/- by invoking the provisions of Section 8 and 9 of the Insolvency & Bankruptcy Code (hereinafter called "Code") read with Rule 5 and 6 of Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016. This Petition was filed on 25.03.2019.

2. Brief facts by the Petitioner:

a) The Corporate Debtor is liable to pay an amount of Rs. 80,50,166/- plus interest of Rs. 15,82,307/- towards supply of goods/material supplied by the Petitioner. The following documents evidencing the delivery of material have been annexed to the Petition:

I. Work Orders placed by the Corporate Debtor namely:

- 1) P.O. No. Chem- 164 dated 22/01/2018,
- 2) P.O. No. Chem- 173 dated 12/02/2018 and
- 3) P.O. No. Chem- 183 dated 07/03/2018.

II. Invoices raised by the Petitioner namely:

- 1) Invoice bearing No. 3504114 dated 22/1/2018 of Rs.90,624/-,
- 2) Invoice bearing No. 3504433 dated 15/2/2018 of Rs.60,416/-,
- 3) Invoice bearing 9 No. 3504697 dated 7/3/2018 of Rs.1,40,066/-,
- 4) Invoice bearing No. 3504782 dated 13/3/2018 of Rs.51,24,787/- and
- 5) Invoice bearing No. 3400271 dated 18/4/2018 of Rs.26,48,628/-.

III. Transport Challans by the Petitioner:

- 1) Receipt No. GC7888457 dated 22/1/2018 of VTrans,
- 2) Receipt No. GC8096368 dated 16/2/2018 of VTrans,

- 3) Receipt No. GC8420760 dated 8/3/2018 of VTrans,
 - 4) Receipt No. 21978 dated 13/3/2018 of Shree Sai Logistics and
 - 5) Receipt No. 22275 dated 19/4/2018 of Shree Sai Logistics.
- b) The Petitioner also filed complaints bearing No.CC/2920/SS/2018 and CC/5027/SS/2018 under Section 138 of Negotiable Instruments Act, 1881 before the Metropolitan Magistrate Court at Sewree against the Corporate Debtor and the same is pending.
- c) The Petitioner issued Demand Notice under Section 8 of I & B Code on 29.01.2019 and the Corporate Debtor filed reply dated 02.02.2019, both of which has been annexed to the Petition.

3. Reply of the Corporate Debtor:

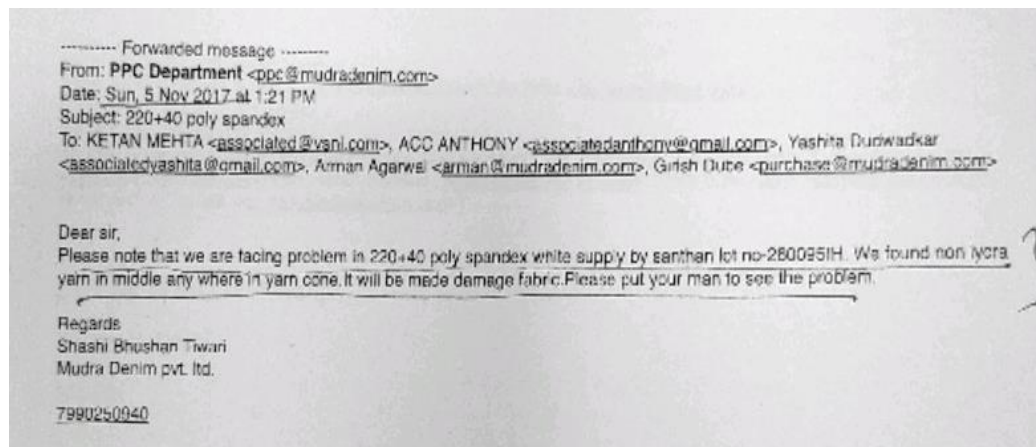
- a) The Corporate Debtor pointed out that Petitioner is represented by its sole proprietor Mr. Ketan Mehta. The same Mr. Mehta is also the sole proprietor in respect of one Associated Chemical (hereinafter called "AC") who has also filed a Company Petition No. 1139/(MB)/2019 before this Tribunal against the present Corporate Debtor under Section 9 of the Code. Therefore, both the firms, i.e., the present Petitioner and AC, are effectively merely different business names of the sole proprietary concern of one Mr. Ketan Mehta and they have no separate/unique corporate identity of their own. Even both of their contact numbers and email addresses are identical.
- b) The Corporate Debtor had been procuring raw materials from Mr. Ketan Mehta since 2017. It was common practice between the parties that even if the Corporate Debtor issued purchase orders on one of the above said firms, Mr. Mehta, as per his own convenience, would provide the required materials under the invoice of another firm. Additionally, it was also evident from an email dated 26.06.2018 that the same staff

coordinated the accounts for both the present Petitioner upon the instructions of Mr. Mehta. It has been the customary practice that payments made by the Corporate Debtors would be adjusted against two different accounts.

- c) Mr. Ketan Mehta, under the name of both of the above said firms, was in the business of supplying raw materials such as yarn and chemicals to the Corporate Debtor which were utilized by the Corporate Debtor to manufacture its fabrics. Since Mr. Mehta was only a trader and did not manufacture yarn and/or chemicals, he would supply yarn purchased from third parties such as Sanathan Textiles Pvt. Ltd. and Suraj Industries Pvt. Ltd. to the Corporate Debtor.
- d) The fabrics manufactured by the Corporate Debtor would in turn be supplied by the Corporate Debtor to its buyers who would sell the fabric to garment manufacturers who would convert the same into garments. Therefore, any defect in the yarn and/or chemicals supplied by the Petitioner would only manifest itself when the fabric was being converted into finished garments which would take approx. 90 to 180 days depending on the market demand.
- e) The Corporate Debtor raised the two following distinct claims with respect to the defective yarn that had been supplied by the Petitioner to the Corporate Debtor much before the issue of demand notice by the Petitioner:
 - i. The Corporate Debtor, in or around October, 2017, had placed purchase orders on the Petitioner for the purchase of yarn. However, instead of the present Petitioner, AC supplied the required quantity of the yarn (which was originally manufactured by Sanathan Textiles Pvt. Ltd.) and raised its invoices upon the Corporate Debtor. The Corporate Debtor manufactured the fabric out of the said yarn which was then sold by the Corporate Debtor to the distributors who in turn supplied the fabric to the garment manufacturers. It was

only then revealed that the yarn was defective and consequently, various complaints were raised by the distributors upon the Corporate Debtor. The Corporate Debtor had already paid an aggregate sum of Rs. 99,97,202/- to the Petitioner towards the invoices bearing nos. 3500357, 3500367, 3500379, 3500380, 3500385, 3500483, 3500484, 3500489, 3500560 and 3500586 prior to the defects in the yarn coming to light. The Corporate Debtor exchanged following emails in 2017 with Mr. Ketan Mehta regarding the issue of defective yarn which show that Mr. Mehta was aware of and admitted the fact that the yarn was defective:

i.i. Email dated 05.11.2017 from the Corporate Debtor to the Petitioner:



i.ii. Email dated 07.11.2017 from the Petitioner to the Corporate Debtor:

----- Forwarded message -----
From: **KETAN MEHTA ASSOCIATED CHEMICAL CORPORATION** <associated@vsnl.com>
Date: Tue, 7 Nov 2017 at 9:55 AM
Subject: RE: 220+40 poly spandex
To: PPC Department <ppc@mudradenim.com>, ACC ANTHONY <associatedanthony@gmail.com>, Yashita Dudwadkar <associatedyashita@gmail.com>, Arman Agarwal <arman@mudradenim.com>, Girish Dube <purchase@mudradenim.com>, Sanathan Raj Kapadia <raj_kapadia@sanathan.com>

Dear Mr Dube / Mr Tiwariji
Purchase Dept.
Mudra

Dear Sir


We are arranging for technician today .
Please do not use the material.

If you find any issue in any of the product , please do not use the product.

If you don't have additional stock of this product , please inform us . We shall dispatch the fresh goods.

With regards
Ketan

KETAN MEHTA
ASSOCIATED CHEMICAL CORPORATION
Antop Hill Warehousing, A/29, Ground Floor, Vidyalankar Collage Road, Wadala (E), Mumbai - 400 037.
PH: 24143602/09/13/16 E-mail : associated@vsnl.com



i.iii. Email dated 08.11.2017 from the Corporate Debtor to the Petitioner:

----- Forwarded message -----
From: **PPC Department** <ppc@mudradenim.com>
Date: Wed, 8 Nov 2017 at 5:36 PM
Subject: Re: 220+40 poly spandex
To: KETAN MEHTA ASSOCIATED CHEMICAL CORPORATION <associated@vsnl.com>
Cc: ACC ANTHONY <associatedanthony@gmail.com>, Yashita Dudwadkar <associatedyashita@gmail.com>, Arman Agarwal <arman@mudradenim.com>, Girish Dube <purchase@mudradenim.com>, Sanathan Raj Kapadia <raj_kapadia@sanathan.com>

Dear sir,
Mr.P.A.Patel visited to our company Please find attached mem

Regards
Shashi Bhushan Tiwar
Mudra Denim Pvt. Ltd.
7990250940

Date: 08-11-2017

MINUTES OF MEETING

Today Mr. P A Patel – General Manager Sanathan Textiles Pvt Ltd has visited to our plant for complaint raised by us for 220+40 poly spandex white Lot No: 820201H, which was received 4017.99 Kgs dated 29-10-2017.

Following points were discussed in person with Mr. Haresh Raval, Mr. Vinod Carpenter, Mr. S B Tiwari and Mr. P A Patel:

1. Sample yarn shown to Mr. P A Patel for Non-Lycra Yarn found in 220+40 poly spandex white yarn.
2. Damaged fabric sample shown to Mr. P A Patel.
3. We seek proper attention and care to our order so that this kind of mistakes can be avoided in the future.
4. Finished fabrics gradation has been ~~done~~ done due to non lycra weft yarn problem as matter will solve commercially.

Deforiate



Mr. P A Patel

G M - Sanathan Textile



Mr. Haresh Raval
CEO - Mudra Denim



Mr. S B Tiwari
PPC Dept - Mudra Denim

i.iv. Email dated 20.11.2017 from the Corporate Debtor to the Petitioner:

----- Forwarded message -----

From: PPC Department <ppc@mudradenim.com>

Date: Mon, 20 Nov 2017 at 1:53 PM

Subject: Re: 220+40 poly spandex

To: KETAN MEHTA ASSOCIATED CHEMICAL CORPORATION <associated@vsnl.com>

Cc: ACC ANTHONY <associatedanthony@gmail.com>, Yashita Dudwadkar <associatedyashita@gmail.com>, Arman Agarwal <arman@mudradenim.com>, Girish Dube <purchase@mudradenim.com>, Sanathan Raj Kapadia <raj_kapadia@sanathan.com>

Dear all,

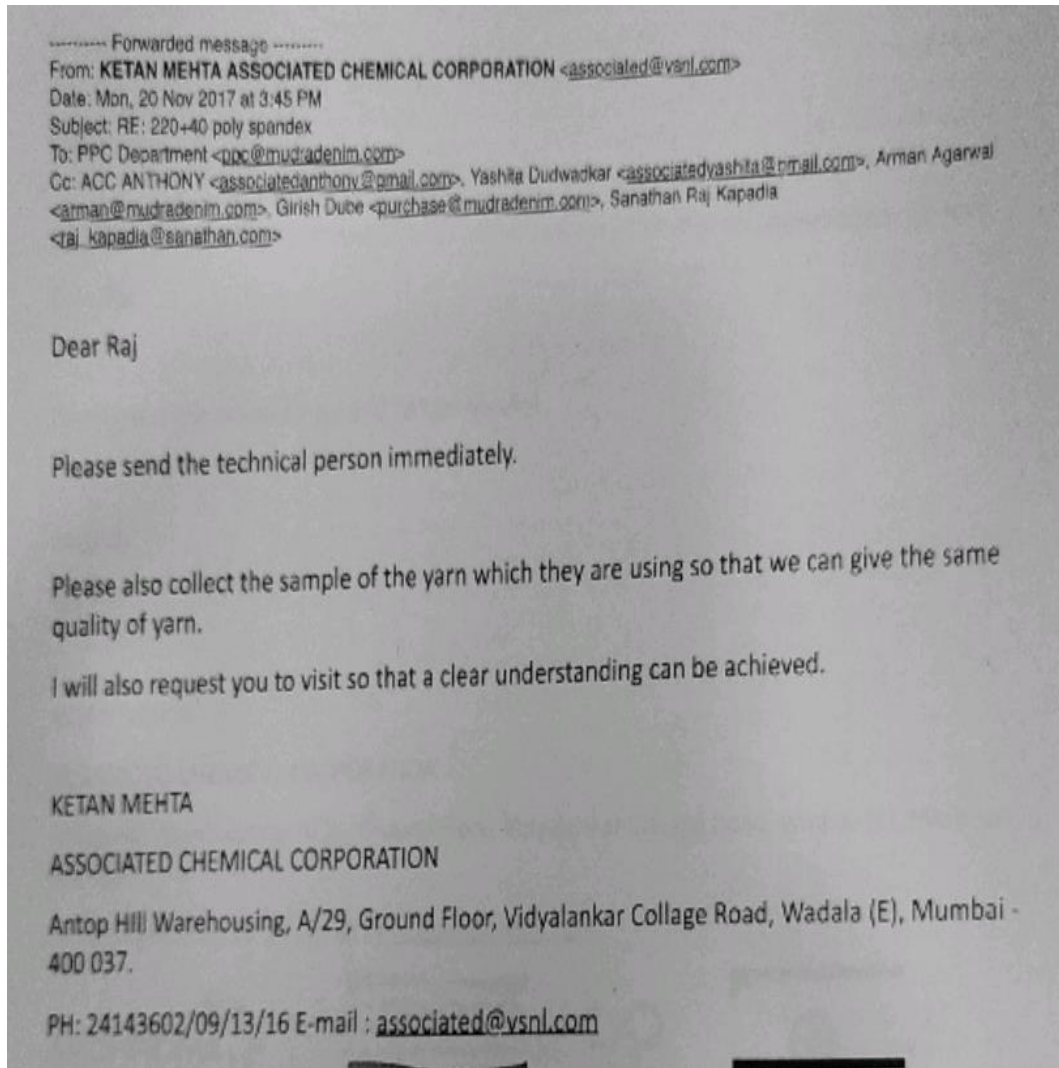
we facing still problem in 220+40 poly spandex white. Our stander sinkage in fabric is 12%. but we found only 8 %. Please send your person to see the problem. Our 20000 mtr fabric have made. It will gone in damage fabric.

Regards

Shashi Bhushan Tiwari
Mudra Denim pvt. ltd.

7990250940

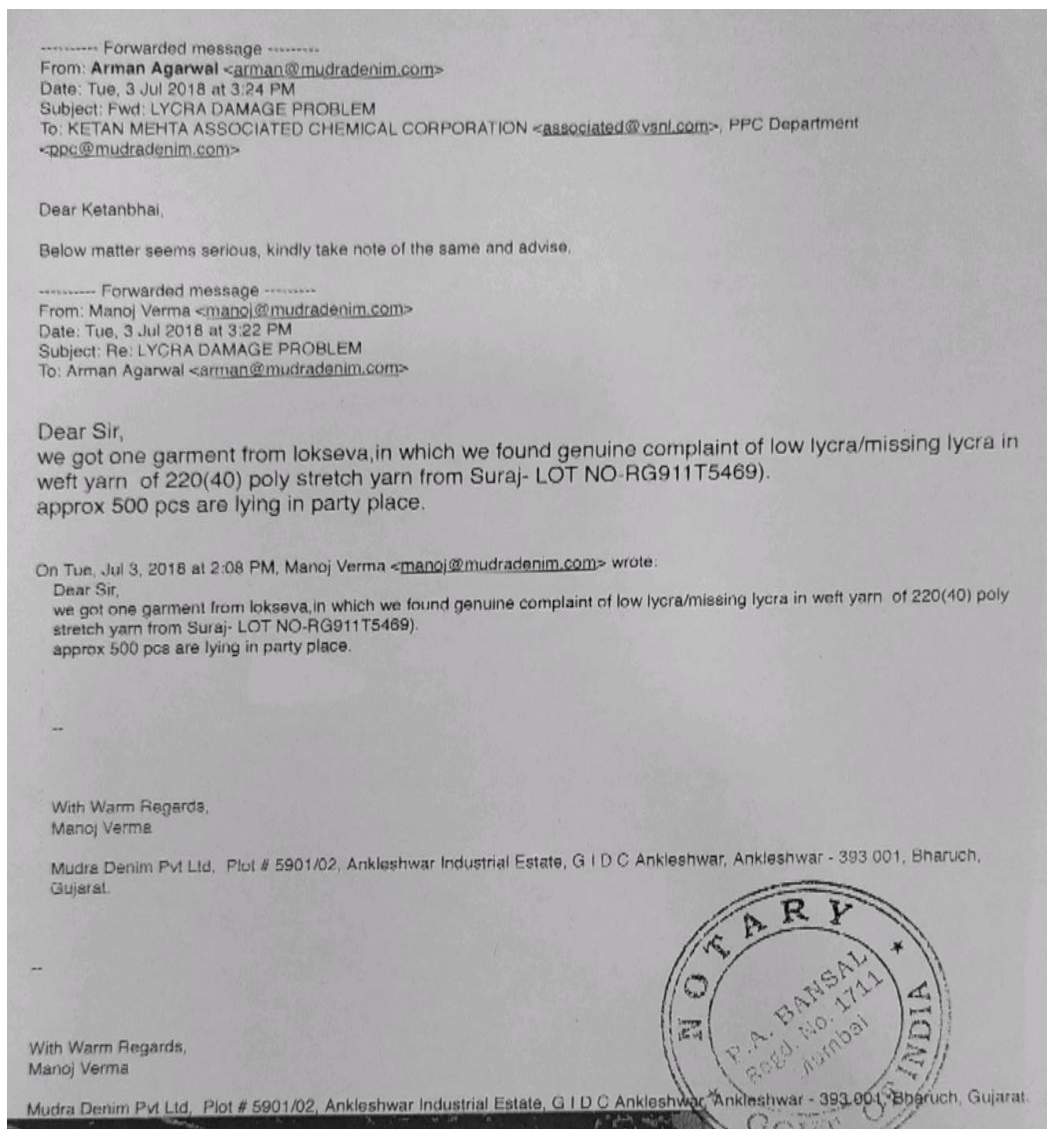
i.v.: Email dated 20.11.2017 from the Petitioner to the Corporate Debtor:



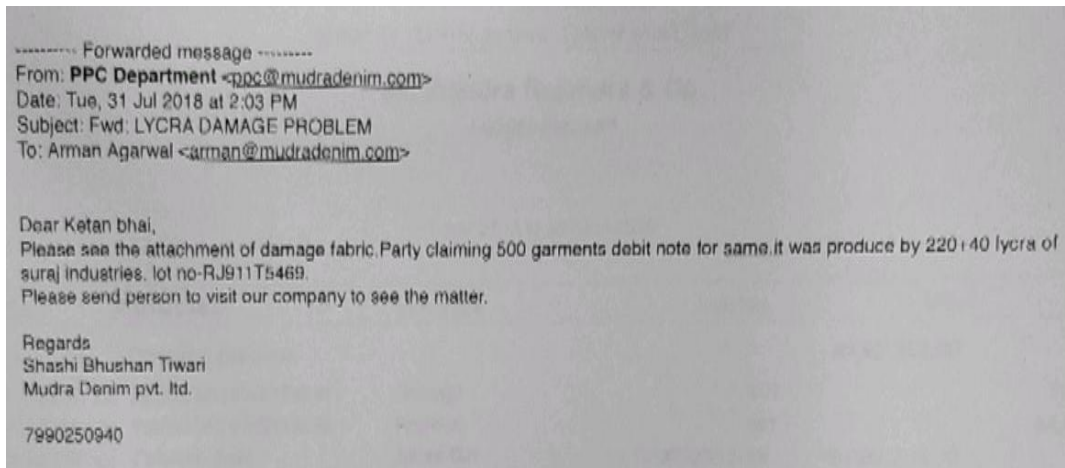
- ii. The Petitioner stopped supplying yarn manufactured by Sanathan Textile and began supplying yarn manufactured by Suraj Industries. Mr. Mehta even assured the Corporate Debtor that the problems being faced in the yarn supplied by Sanathan Textile would not arise in the yarn supplied by Suraj Industries. In the period of February to April 2018, the Petitioner had supplied yarn manufactured by Suraj Industries to the Corporate Debtor, in respect of which invoices for an aggregate amount of Rs. 16,81,835/- were raised upon the Corporate Debtor by the Petitioner. The Corporate Debtor once again made duly payments in respect

of the said invoices and then later realized again that the yarn supplied by Mr. Mehta was defective and various complaints were again raised by the traders who had purchased fabric from the Corporate Debtor. The Corporate Debtor again exchanged following emails in 2018 with Mr. Ketan Mehta regarding the issue of defective yarn:

ii.i. Emails dated 03.07.2018 from the Corporate Debtor to the Petitioner to which Mr. Mehta did not even replied:



ii.ii. Email dated 31.07.2018 from the Corporate Debtor to the Petitioner:



- f) It was then submitted that the above emails show that the defects in the yarn came to light to the Corporate Debtor only after a period of 90-120 days from the date on which the yarn was supplied by the Petitioner, by when the Corporate Debtor had already made an aggregate payment of Rs. 1,16,79,037/- in total to Mr. Mehta. In addition to the loss in terms of the payments made by the Corporate Debtor to the Petitioner for the defective goods, the Corporate Debtor also suffered losses on account of expenses incurred in converting yarn to fabric as well as loss of goodwill for having sold fabric made of defective yarn to its buyers, who in turn refused to pay the Corporate Debtor for the fabric. Also, the distributors made claims to the Corporate Debtor towards operational costs for converting the fabric to garment and losses suffered due to delay in shipment of the new fabric to their garment manufacturer. The same is evident from the ledgers of the respective distributors maintained by the Corporate Debtor.
- g) The Corporate Debtor continued to do business with Mr. Mehta's firms, i.e., the present Petitioner and AC, based on the assurance given by Mr. Mehta personally and through his agents, including but not limited to the assurance recorded in the Minutes of Meeting that commercial implications of the defective yarn will be looked into. However, Mr. Mehta failed to take any steps whatsoever to offset the losses suffered by the

Corporate Debtor and hence, the Corporate Debtor was constrained to withhold the payments in respect of the impugned invoices which form the basis of captioned Petition.

Findings:

4. The Petitioner being a Sole Proprietor Mr. Ketan Mehta, represented through its power of attorney holder Mrs. Rupal Hitesh Modi. Further Mr Ketan Mehta also represents his other firm Associated Chemical and has filed CP 1139/2019 against the same Corporate Debtor. Both the entities are seeking initiation of CIRP against the Corporate Debtor for payment of outstanding dues under several invoices, towards raw material supplied by them.
5. Ongoing through the submissions made by the Learned Counsel for the Petitioner and the Corporate Debtor and on perusing the documents produced on record, this bench opines as follows:
 - a) There is a dispute regarding the quality of the goods supplied by the Petitioner to the Corporate Debtor which is evidenced by trail of emails exchanged referred below:
 1. Email dated 05.11.2017 from the Corporate Debtor to Petitioner,
 2. Reply email dated 07.11.2017 by Petitioner to Corporate Debtor,
 3. Minutes of meetings dated 08.11.2017 between the parties,
 4. Email from Corporate Debtor dated 20.11.2017,
 5. Reply from Petitioner to Corporate debtor dated 20.11.2017,
 6. Email forwarded by Corporate Debtor to Petitioner dated 03.07.2018 wherein the Corporate Debtor received complaint regarding quality of goods from his customer,
 7. Email from Corporate Debtor dated 31.07.2018 to Petitioner complaining quality issues of material supplied.
 - b) All the above emails thus demonstrate that the Corporate Debtor has raised several issues of disputes regarding the

quality of goods supplied by the petitioner much before the issue of demand notice dated 24.11.2019 and the same will squarely falls under the purview of dispute as provided under Section 5(6) of the Code which provides as below:

"dispute includes a suit or arbitration proceedings relating to—

(a) the existence of the amount of debt;

(b) the quality of goods or service; or

(c) the breach of a representation or warranty."

- c) The correspondence referred to above is common in CP 1139/2019, wherein a separate order is being passed.
- d) It is beneficial to refer to the judgement of the Hon'ble Supreme Court in the case of *Mobilox Innovations Pvt. Ltd. v/s Kirusa Software (P) Limited- 2017 (SCC Online SC 1154)* wherein it was held as below:

"40. Therefore, all that the adjudicating authority is to see at this stage is whether there is a plausible contention which requires further investigation and that the "dispute" is not a patently feeble legal argument or an assertion of fact unsupported by evidence. It is important to separate the grain from the chaff and to reject a spurious defense which is mere bluster. However, in doing so, the Court does not need to be satisfied that the defense is likely to succeed. The Court does not at this stage examine the merits of the dispute except to the extent indicated above. So long as a dispute truly exists in fact and is not spurious, hypothetical or illusory, the adjudicating authority has to reject the application".

- e) Therefore, in view of the ratio laid down by the Hon'ble Supreme Court it can be said that there is a clear dispute relating to the existence of debt as provided under Section 5(6)(b) of the Code.

6. In view of the above discussions, the Petition is dismissed with liberty to the Petitioner to proceed in accordance with law. No costs.

SD/-

Chandra Bhan Singh
Member (Technical)

SD/-

Suchitra Kanuparthi
Member (Judicial)