

NATIONAL COMPANY LAW APPELLATE TRIBUNAL,

PRINCIPAL BENCH, NEW DELHI

Company Appeal (AT) (Ins) No. 166 of 2022

IN THE MATTER OF:

**Subhash Chandra Goyal Sole
Proprietor of Goyal Enterprises
D-707, Signature -11,
Sarkhej- Sanand Road, Sarkhej, Ahmedabad**

...Appellant

Vs.

**K B Ispat Private Ltd.
(CIN No. U27310GJ2010PTC063359)
Survey No 15/3, Bhavnagar- Vallabhipur Highway
Near Ghanghli, Village- Maglana Tal- Sihore
Dist. Bhavnagar
Registered address at;
Plot No. 93A, Gita Chowk Krishnanagar,
Bhavnagar, Pin 364001.**

...Respondent

Present:

**For Appellant : Mr. Vivek H Shah and Mr. Kunal Vaishnav, Advocates
For Respondents : Ms. Anushree Kapadia, Advocates**

J U D G M E N T

DR. ASHOK KUMAR MISHRA, TECHNICAL MEMBER

1. The appeal has been filed by the Appellant- 'Subhash Chandra Goyal' Sole Proprietor of Goyal Enterprises under Section 61 R/w Section 9 of the 'Insolvency and Bankruptcy Code, 2016' (in short 'Code') against the

impugned order dated 01st December, 2021 passed by the 'Adjudicating Authority' (National Company Law Tribunal), Ahmedabad Bench in CP No. CP(IB) 555/9/NCLT/AHM/2019.

2. The Appellant has sought the following reliefs:

- a. That the impugned order as passed by the Adjudicating Authority be set aside;
- b. That the application filed by the appellant under section 9 of the Insolvency and Bankruptcy Code, 2016 against the Respondent be allowed and the Corporate Insolvency Resolution Process be initiated against the Respondent-Corporate Debtor;
- c. Pending the hearing and final disposal of the present Appeal, direct the Respondent to deposit the amount of Rs. 26,89,290 so admitted by them before this Tribunal etc.

3. The Appellant is a trader of Iron & Steel and other metals etc. The Appellant does not have warehouse and once it gets the order from the manufacturer/Supplier then it places the order on the other supplier / manufacturer and asked them to directly supply the material to the Manufacturer/Supplier / Corporate Debtor (CD) in the present case. The Appellant is the Sole Proprietor of M/s. Goyal

Enterprises. It is stated by the Ld counsel for the Operational Creditor(OC)/Appellant that the CD has approached the Appellant for providing supplies of Sponge Iron etc. goods to the CD which will be used by the CD as raw materials / process materials for its plant at Bhavnagar - Vallabhipur Highway. The business dealing between the Operational Creditor (OC) and CD commenced from 2018 and thereafter, CD was placing orders on the Appellant / OC and the OC have been procuring the materials from the supporting manufacturer / suppliers and thereafter directly being supplied to the CD. A look at Tax Invoices of OC dated 04th May, 2019 (appearing at page 48 of the Appeal paper Book) reveal that even supplier reference is also mentioned. It is also revealed from the Appeal paper book that 42 consignment of materials each ranging of invoice values between Rs. 5 lac to Rs.12 lacs approx. has been supplied and the Appellant has furnished the GST Invoice and also the supplier / manufacturer invoice alongwith the E-way bills since the time that was prescribed under the GST Laws and the CD has never disputed any supply. The CD was aware of the source of material from where the Appellant was supplying the materials. The Appellant had supplied Sponge Iron in lumps and Sponge Iron and other goods of Iron and Steel to the CD on 04th May, 2019 for a total value of Rs. 30,21,749/-. It is also submitted that in the said supplies, the CD has raised Debit Notes dated 10.05.2019 for a value of Rs. 3,32, 459/- for quality issues which has been accepted by the Appellant and acknowledged and accounted to the credit of the CD

by the Appellant and is making only a claim of Rs. 26,89,290/- which has not paid by the Appellant. At page 12 of the Appeal paper book, the **Appellant states as follows:** The details of three invoices at dispute are as under:

Sr. No.	Date	Invoice Amount (in Rs.)	Date	Debit Notes (in Rs.)
1.	4 th may, 2019	1,017,467/-	10 th May, 2019	112,649/-
2.	4 th may, 2019	993,135-	10 th May, 2019	108,917/-
3.	4 th may, 2019	1,011,147/-	10 th May, 2019	110,893/-
	Total	3,021,749		332,459/-

4. What the Appellant is stating that the balance outstanding of Rs.26,89,290 became due and payable on the next date of invoice i.e. 05.05.2019 as per agreed terms and conditions.
5. The Ld counsel for the Appellant has stated that they are chasing for these payments since 11.05.2019 and being aggrieved due to non-payment of legitimate dues of the CD, the Appellant was constrained to prefer demand notice in Form-3 & Form-4 under the Code vide notice dated 01.07.2019. The Ld. Counsel for the Appellant has stated that there is a default in the payment and it is an unpaid operational debt and hence it is just and equitable that CIRP be initiated against the CD.
6. The Ld counsel for the Appellant has also stated that they have received the reply of demand notice on 22.07.2019. The Ld counsel for the Appellant has also stated that in the demand notice, the CD has admitted

the Debt and hence the Appellant has filed the application under Section 9 of the Code before the Adjudicating Authority for initiation of the CIRP against the CD/Respondent.

7. While the Respondent side in its reply has submitted the followings:
 - a. That an **alert circular No. 13/Kol-S/2019** has been issued by the Commissioner of CGST Tax and Central Excise, Kolkata South Commissionerate, Kolkata – 700107 in which it is mentioned that on verification one M/s. Rathank Retails Pvt, Ltd was found to be a non-existent & fictitious company who passed huge amount of irregular input tax credit to various recipients throughout India without physical supply of goods as revealed from the analysis of their GSTR-1 data filed for the period December, 2017 to September, 2018.
 - b. It is further stated that it is observed in the said circular that the said tax payers issued fake invoices fraudulently only to pass on illegal benefit of input tax credit to the recipients of fake invoices and, therefore, the input tax credit availed by the recipients are required to be denied/disallowed with applicable interest and penalty as per law (refer page 74-75 of the Appeal paper book). One of the recipients from the non-existent company in the present proceedings which is reflected at page 75 of the Appeal paper book is M/s.Ranthank Retails Pvt. Ltd. (GSTIN – 19AAICR1096E1Z8)

- c. It is also submitted by the Respondent that the Appellant supplied the goods and raised invoices by levying tax in the Form of CGST @9% and SGST @9%.
 - d. The CD on receipt of material releases the payment of the invoice alongwith tax so levied and then claim credit in the GST Returns on the said tax paid which are purchased from the Appellant.
 - e. The Respondent is worried that if the input tax credit which the Appellant has availed from the alleged non-existent supplier gets disallowed then the said credit being not available to the Appellant will in turn disentitle the Respondent Company/CD to avail the credit from the said transaction. The amount involved for the period from 01.04.2018 to 19.07.2019 towards inputs tax credit is to the tune of Rs. 59 lacs approx. which will get rejected on the purchases made from the Appellant to the tune of Rs. 3.3 Crore. As a result, the CD will have to burden with this liability to pay the entire tax to the extent of Rs. 59 lacs alongwith interest and penalty on the said amount.
8. The Ld. Counsel for the Respondent has submitted that they are willing to pay the amount of Rs. 26,89,290 but has asked the Appellant to provide a bank guarantee of an equal amount of GST which the Respondent Company has paid to the Appellant for the purchases made for the said period. The Ld counsel further stated that they are still willing to pay the amount once they provide the bank guarantee for the GST amount involved of approx. Rs.59 lacs. These matters were persisting between the Appellant and the CD

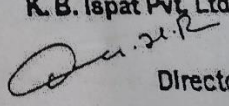
between May and June, 2019. In the meantime, the Appellant has sent a demand notice dated 06.07.2019 to the CD which was delivered to the CD on 08.07.2019 seeking recovery of dues illegitimately to extort money and create undue pressure on the CD which is nothing but an abuse of process of law.

9. It was also submitted by the learned counsel for the Respondent/CD that they have explained through an additional affidavit dated 12.06.2020 before the Adjudicating Authority which indicates that the GST Registration No. of M/s. Rathank Retails Pvt, Ltd, GST No. Registration Number viz 19AAICR1096E1Z8, the supplier of the appellant has been cancelled w.e.f.18.06.2019. It proved that the said supplier of the appellant is a non-genuine party and the input tax credit which the appellant has availed from the alleged non-existent suppliers shall be disallowed as a result of which the Respondent/CD shall not be in a position to avail input tax credit from the said transactions.
10. In the demand notice which has been received by the Appellant on 22nd July, 2019, the CD/Respondent has emphatically stated as follows which is appearing at page 72 and 73 of the Appeal paper book:

...the fact that as per the Commissioner of GST, Kolkata, M/s Rathank Retail...
 Private Limited is a bogus supplier from whom you have made the purchases, since, you have
 purchased the materials from a bogus supplier you are not entitled to the input credit on your
 purchases and in turn you cannot pass on the input credit to your customer who has purchased
 materials from you. As per our records we have purchased the materials from you as under and
 have made the payment along with GST.


PERIOD	PURCHASE	CGST	SGST
01/04/2018 to 31/03/2019	4603054.00	414274.86	414274.86
01/04/2019 to 19/07/2019	28437010.50	2559330.95	2559330.95
Total	33040064.50	2973605.81	2973605.81

We have specifically drawn your attention to the fact that because of your suspicious
 purchases as mentioned above, in all the likelihoods we may be refused our legitimate claim of our
 input credit which amounts to Rs.5947211.62/- (CGST OF Rs. 2973605.81/- and SGST of Rs.
 2973605.81/- as mentioned above). Despite the fact that our purchases and payment is genuine we
 cannot afford that our legitimate claim of input credit got refused by the GST department. Till we
 came to know that your source of purchase is suspicious we have kept on making the payments
 against our purchases which is obvious from our records. Against the total purchases (GROSS) of
 Rs. 38987276/- only Rs.2689290/- is outstanding that means we have made the payment of
 Rs.36297986/-. Despite the fact that we have drawn your specific attention to the fact that because
 of your suspicious purchases our claim for input credit is getting jeopardized, you instead of
 resolving the issue, comfortably ignore the same and send us a demand notice which shows your
 mala fide intention and now your silence to our query tend to believe us that our fear that we may
 loose our input credit is genuine. In presence of pendency our legitimate query about the legitimacy
 of input credit as has been passed by you, your subject notice is bad in law. Here, we draw your

K. B. Ispat Pvt. Ltd.

 Director

KB ISPAT PVT. LTD.

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 Works : Survey No : 152, Bhavnagar Vallbhipur Highway, Near Ghanghal, Village : Madhna, Taluka : Sidor,
 Dist. Bhavnagar. • Mo. No. 9838111313, 9825207331 • E-mail: Kbispat@rediffmail.com

IS : 2830

 CM / L - 2860969

Kind attention to the fact that without resolving the query if you take any further action, then it will
 affect our goodwill and then in turn we will not hesitate to take any legal action against you for
 damaging our reputation.

We once again inform you that we are ready to make the payment of your balance amount
 provided you give us appropriate amount of bank guarantee which cover the amount of GST as has
 been paid by us to you. The guarantee will remain in force till our assessment is over. As talked to
 you in our personal meeting at 3rd July, 2019, if you can suggest any alternative to our legitimate
 worry then you are most welcome to come with the specific solution.

*For your quick reference kindly find ALERT CIRCULAR Issued by OFFICE OF THE COMMISSIONER,
 CENTRAL GOODS SERVICE TAX AND CENTRAL EXCISE, KOLKATA SOUTH COMMISSIONERATE
 which has already been given to you earlier.

11. The CD/Respondent has cited the judgment of Hon'ble Supreme court
 Mobilox Innovations Pvt. Ltd. Vs. Kirusa Software Pvt. Ltd, AIR 2017 SC 4532
 to supplement its case that there is a genuine pre-existing dispute.

The Respondent in view of the reasons stated above has sought the appeal to be dismissed along with exemplary costs.

12. The Adjudicating Authority while passing the impugned order has elaborately gone into the analysis of fact and related law as stated below:

“8.....The Corporate Debtor had, in its letter received by the Operational Creditor on 22.07.2019, has admitted the debt and was ready to pay the due amount on providing the Bank guarantee till the assessment. Though the letter in respect to the dispute of ITC was received by the operational creditor after 10 days after the i.e. statutory period of reply to the demand notice as per section 8 of IB Code, the dispute seems to real and genuine. It is the bonafide right of the Corporate Debtor that the amount paid for GST must be assessed without any complication. The objection of the Operational Creditor in respect that no such agreement was made by and between the Operational Creditor and Corporate Debtor for giving the Bank guarantee for GST dispute is not well founded. Such a situation arose after Rathank Retails Private Limited was declared as a fictitious company. Such, situation was not in picture since the inception of the business relations with the Operational Creditor.

9. The contention of the Operational Creditors that all the 42 consignments delivered to the Corporate Debtor were purchased from other than the aforesaid fictitious company, and the

Operational Creditor used to attach the original suppliers invoice along with its invoice was also not born by record, as not even a single invoice of the original supplier has been attached by the Operational Creditor in the petition. On the other side, the Corporate Debtor is still ready to pay the alleged due amount of the Operational Creditor on giving the Bank Guarantee till the assessment of ITC. The apprehension of the Corporate Debtor is genuine, as if the transactions of the Operational Creditor prove to be non-genuine, the Corporate Debtor would have bear to the additional GST along with interest and penalty. In view of the above, pre-existing dispute under section 8 (2) (a) of IB Code fully established. The petition of the Operational Creditor for initiation of CIRP under section 9 of IB Code is rejected.”

13. We have heard Id counsels for the parties and have analyzed the information provided by them and the relevant provisions of the Code and related law laid down by the Hon’ble Apex Court on the subject and as such record following observations:
- a. It is not in dispute that the Appellant is a ‘Trader’ and whenever he used to get any order from any source, he used to put corresponding order on the supplier/manufacturer of that particular goods and used to directly ask them to make direct supply to the concerned source/CD.
 - b. It is also not in dispute that in the present case the involvement of CGST/SGST issue is not involved.

- c. It is also not in dispute that the CGST Commissionerate, Kolkata has not issued the above stated alert circular no. 13/Kol-S/2019 which involves M/s. Rathank Retails Pvt, Ltd and in that details the name of Subhash Goyal is also existing at page 75 of the Appeal paper book.
- d. It is also not in dispute that the GST Authorities have not cancelled the M/s. Rathank Retails Pvt, Ltd, GST No. Registration Number viz 19AAICR1096E1Z8 (appearing at page 33 of the Reply /objections on behalf of the Respondent/CD). The said firm date of registration is 13.12.2017 and date of cancellation is 18.06.2019. Search result is also covering the period of 2018-2019 (page 33 of the Reply/Objections of the Respondent/CD)
- e. As far as the outstanding of amount of invoice to be paid by CD is concerned amounting to Rs. 26,89,290/-, CD is conspicuous of its inputs tax credit of Rs. 59 lacs likely to get rejected on the purchase made from Appellant for a value of Rs. 3.3 Crore from 01.04.2018 to 19.07.2019 and this will be an additional liability to the CD to pay Rs. 59 lacs alongwith interest and penalty, if GST Department, Kolkata finally come to the conclusion that the transactions of the Appellant with other parties are proved to be non-genuine. Accordingly, as an abundant precaution, the CD has asked for a bank guarantee for the above amount with a requisite validity till its assessment by GST Department is over. The Appellant is not interested in providing the bank guarantee in spite of their mutual discussions in the month of May/June 2019 and even during the course of

hearing was not willing to provide the bank guarantee. In the reply to the demand notice also, this is the issue of very deep disputes between the parties as the Appellant has purchased goods from suspicious source and will badly damage also the image of the CD. In the reply to the demand notice, it is categorically stated that out of total purchases of Rs. 3,89,87,276/- the CD has paid Rs. 3, 62,97,986/- and the only amount outstanding is Rs. 26,89,290/- whereas in case of taking adverse stand or irregularity of the Appellant may result into a loss of input tax credit amounting to Rs.59,47,211.62 with interest and penalty. All this reflects that there is a serious dispute between the Appellant and the CD.

- f. The Respondent has raised the dispute on the issue of the Input Tax Credit in the reply to the demand notice itself. Although they have not replied within 10 days which is directory in nature but has replied in a very short period (Demand notice is dated 01st July, 2019. Reply received from CD by Appellant on 22nd July, 2019). Hence, it meets the criteria of Section 9 of the Code for raising the dispute. As in the circumstances stated above, this is not a moonshine defence.
- g. The IBC is a summary proceeding. The role of the Code is limited to Insolvency Resolution to Corporate Persons in a time bound manner & in case of initiation of CIRP by Operational Creditor, the Operational debt must be undisputed. As far as the GST dispute is concerned, he is free to approach Appropriate Forum under Chapter – V of the Sale of Goods Act, 1930 for redressal of its grievance.

- h. It is also evident that the CD is a going concern and it has a turnover of Rs. 186 Crore (approx.) during 2018-19 and is a profit-making company and profit before tax is Rs. 3 Crore (approx.) and it has generated a net cash flow from operating activities Rs. 3.83 Crore (appearing at page 131 of the Appeal paper book). It is also stated in the reply that the Company is having 60 employees and is paying wages and salary to the extent of Rs. 75 lacs. The Company is having a good reputation in the market and its statutory audit report is also available in the appeal paper book at page 125. The Statutory Audit Report vide page 127 para -VII also reflects that there are no dues of sales tax authority.
- i. There are certain provisions of the Code which are involved for initiation of CIRP by Operational Creditor. For brevity and clarity, a few of them are extracted below: Section 3, (10) (11) & (12) Section 5(20) & (21), Section 8 & 9 of the Code.

“Section 3(10) - *"creditor" means any person to whom a debt is owed and includes a financial creditor, an operational creditor, a secured creditor, an unsecured creditor and a decree-holder;*

Section 3 (11) *"debt" means a liability or obligation in respect of a claim which is due from any person and includes a financial debt and operational debt;*

Section 3 (12) *"default" means non-payment of debt when whole or any part or instalment of the amount of debt has*

become due and payable and is not [paid] by the debtor or the corporate debtor, as the case may be;

Section 5(20) *"operational creditor" means a person to whom an operational debt is owed and includes any person to whom such debt has been legally assigned or transferred;*

Section 5(21) *"operational debt" means a claim in respect of the provision of goods or services including employment or a debt in respect of the [payment] of dues arising under any law for the time being in force and payable to the Central Government, any State Government or any local authority;*

Section 8 :- Insolvency resolution by operational creditor.

(1) An operational creditor may, on the occurrence of a default, deliver a demand notice of unpaid operational debt or copy of an invoice demanding payment of the amount involved in the default to the corporate debtor in such form and manner as may be prescribed.

(2) The corporate debtor shall, within a period of ten days of the receipt of the demand notice or copy of the invoice mentioned in sub-section (1) bring to the notice of the operational creditor—

(a) existence of a dispute, [if any, or] record of the pendency of the suit or arbitration proceedings filed before the receipt of such notice or invoice in relation to such dispute;

(b) the [payment] of unpaid operational debt— (i) by sending an attested copy of the record of electronic transfer of the unpaid amount from the bank account of the corporate debtor; or (ii) by sending an attested copy of record that the operational creditor has encashed a cheque issued by the corporate debtor.

Explanation.—For the purposes of this section, a “demand notice” means a notice served by an operational creditor to the corporate debtor demanding [payment] of the operational debt in respect of which the default has occurred.

Section 9 - Application for initiation of corporate insolvency resolution process by operational creditor.

(1) After the expiry of the period of ten days from the date of delivery of the notice or invoice demanding payment under subsection (1) of section 8, if the operational creditor does not receive payment from the corporate debtor or notice of the dispute under sub-section (2) of section 8, the operational creditor may file an application before the Adjudicating Authority for initiating a corporate insolvency resolution process.

(2) The application under sub-section (1) shall be filed in such form and manner and accompanied with such fee as may be prescribed.

(3) The operational creditor shall, along with the application furnish—

(a) a copy of the invoice demanding payment or demand notice delivered by the operational creditor to the corporate debtor;

(b) an affidavit to the effect that there is no notice given by the corporate debtor relating to a dispute of the unpaid operational debt;

(c) a copy of the certificate from the financial institutions maintaining accounts of the operational creditor confirming that there is no payment of an unpaid operational debt [by the corporate debtor, if available;]

(d) a copy of any record with information utility confirming that there is no payment of an unpaid operational debt by the corporate debtor, if available; and

(e) any other proof confirming that there is no payment of any unpaid operational debt by the corporate debtor or such other information, as may be prescribed.]

(4) An operational creditor initiating a corporate insolvency resolution process under this section, may propose a

resolution professional to act as an interim resolution professional.

(5) The Adjudicating Authority shall, within fourteen days of the receipt of the application under sub-section (2), by an order— (i) admit the application and communicate such decision to the operational creditor and the corporate debtor if,—

(a) the application made under sub-section (2) is complete;

(b) there is no [payment] of the unpaid operational debt;

(c) the invoice or notice for payment to the corporate debtor has been delivered by the operational creditor;

(d) no notice of dispute has been received by the operational creditor or there is no record of dispute in the information utility; and

(e) there is no disciplinary proceeding pending against any resolution professional proposed under sub-section (4), if any.

(ii) reject the application and communicate such decision to the operational creditor and the corporate debtor, if—

(a) the application made under sub-section (2) is incomplete;

(b) there has been [payment] of the unpaid operational debt;

(c) the creditor has not delivered the invoice or notice for payment to the corporate debtor;

(d) notice of dispute has been received by the operational creditor or there is a record of dispute in the information utility; or

(e) any disciplinary proceeding is pending against any proposed resolution professional: Provided that Adjudicating Authority, shall before rejecting an application under sub-clause (a) of clause (ii) give a notice to the applicant to rectify the defect in his application within seven days of the date of receipt of such notice from the adjudicating Authority.

(6) The corporate insolvency resolution process shall commence from the date of admission of the application under sub-section (5) of this section.”

- j. The above provisions of the Code clearly provides for the requirements of following three criteria's before admission of a petition under Section 9 of the Code for initiation of CIRP by Operational Creditor (i) the 'Debt' must be due and payable in law (ii)there must be occurrence of default & (iii) the 'Debt' must be undisputed.
- k. The accumulation of input tax credit is a pool and if the said pool gets tainted then it is a grey area whether the dealer in the pool is permitted to withdraw any amount from the said pool irrespective of

the period of transaction. In the present case, situation is being perceived.

1. It is very much clear that the amount is outstanding. But the amount is not due and payable in the law as is very much evident from the facts that one of the supplier of the Appellant has on the basis of intelligence input and investigation conducted by 'anti invasion' branch of the Commissionerate of GST has revealed that the concerned supplier has taken registration under GST Regime is nonexistent and fictitious, resulting into perceived loss of more than two times of the outstanding amount loss to the CD without any mistake on the part of the CD. It has created a cumbersome situation and CD has asked for corresponding bank guarantees which has been refused by the Appellant and hence it has resulted into a dispute. So, it can be concluded that it is not meeting the criteria of either debt is due and payable in law or the Debt must be undisputed which are the pre-requisite for the admission of case under Section 9 of the Code. The Appellant is not even meeting the criteria 'as enunciated in Section 9(5)(d) as no notice of dispute has been received by the Operational Creditor. The Operational Creditor has raised the issue with a dispute that the Appellant is not

providing bank guarantee. The Appellant /OC has factually failed to communicate that there is no existence of dispute

m. The Hon'ble Supreme Court has already amplified the role of the Adjudicating Authority on the question of consideration of dispute in Mobilox Innovations Pvt. Ltd. Vs. Kirusa Software Pvt. Ltd, AIR 2017 SC 4532 at para 40:

“All 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.... 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.”

n. All these reflects that the application has been filed with the sole motive of chasing for payments. Now Hon'ble Supreme Court has already settled the matter that the provisions of the Code is not intended to be a substitute to be a recovery forum. The Hon'ble Supreme Court in Civil Appeal No.9597 of 2018, “Transmission

Corporation of Andhra Pradesh limited Vs. Equipment Conductors and Cables Limited” vide para 15 has already held that IBC is not intended to be a substitute to a recovery forum and also laid down that whenever there is existence of real dispute, the IBC provisions cannot be invoked. The Code cannot be used whenever there is existence of real dispute and also whenever the intention is to use the Code as a means for chasing of payment or building pressure for releasing the payments.

- o. In view of the above stated position fact and law, we are unable to disagree with the Adjudicating Authority and uphold the view of the Adjudicating Authority. The Appeal is dismissed. No order as to costs.

**[Justice Rakesh Kumar]
Member (Judicial)**

**(Dr. Ashok Kumar Mishra)
Member(Technical)**

30th May, 2022

New Delhi

Raushan.K