THE NATIONAL COMPANY LAW TRIBUNAL,

KOLKT BENCH,

KOLKATA

IA(IBC)/770/KB/2021
in
C.P (IB) No.648/KB/2019

In the matter of

An application under section 424 of the Companies Act, 2013 read with Rule 11 and 43 of the NCLT Rules;

And

In the matter of:

Trident Fabricators Private Limited

… Operational Creditor

Versus

Hiranmaye Energy Limited_.

…Corporate Debtor

AND

In the matter of

Trident Fabricators Private Limited.

… Applicant

Date of hearing : 30/03/2022

Order Pronounced on :24/05/2022

Coram:
Mr. Rohit Kapoor, Member (Judicial)
Mr. Harish Chander Suri, Member (Technical)

Counsels appeared through Video Conference

1. Mr. Joy Saha.Sr. Adv.] For the Operational Creditor
2. Mr. Arik Banerjee, Adv.]
3. Mr.Rajib Mullick, Adv.]
4. Mr. Rakesh Sarkar, Adv.]

1. Mr. Rishav Banerjee, Adv.] For the Corporate Debtor

2. Mr. Rajarshi Banerjee, Adv.]
3. Mr. Aishwarya Kumar Awasthi, Adv.]

O R D E R

Per: Harish Chander Suri, Member (Technical)

1. The Court is convened by video conference today.

2. By way of this I.A.(IBC)/770/KB/2021, the Operational Creditor /applicant has sought directions upon the Corporate Debtor to file an affidavit disclosing the necessary documents as detailed in the application, which are reproduced as under:-
    i) Detailed balance sheet of the Corporate Debtor from 2015-2016 till 2020-2021.
    ii) Ledger accounts with regard to transactions of the Operational Creditor maintained by the Corporate Debtor from 2015-2016 till 2020-2021.
    iii) Trial Balance maintained by the Corporate Debtor with regard to its dues towards its creditors, which includes transaction with the Operational Creditors from 2015-2016 till 2020-2021 and other financial statements of the Corporate Debtor including the annual accounts from 2015- 2016 till 2020-2021.

3. It is submitted that unless the orders are passed by this Adjudicating Authority, the applicant i.e. Operational Creditor shall suffer irreparable loss, injury and prejudice and will be lack with no other alternative remedy.

4. In this regard, it would be pertinent to mention the background of this case in the main CP (IB)/648/KB/2019 filed by the Operational Creditor. In this C.P., the Operational Creditor has filed the petition under section 9 seeking CIRP of Hiranmaye Energy Limited, the Corporate Debtor through its authorized representative, Mr. Surjit Singh, claiming a sum

of Rs. 12,77,86,304/-as mentioned in Part IV of section 9 application. It is submitted that the Corporate Debtor was earlier known as Indian Power Corporation (Haldia) Ltd. and subsequently, the name of the Corporate Debtor was changed to Hiranmaye Energy Ltd. from 15th January, 2018 having the same CIN No.(Annexure-A).

5. It is further submitted that on 15th September, 2014, one Scorpio Engineering Pvt. Ltd., a company having its registered office at 132, Wheeler Road, Bangalore- 560005 referred to as the buyer in the purchase order placed a purchase order upon the Operational Creditor herein, who was referred as the seller as per terms and conditions of the purchase order. The purchase order was placed for supply of fabrication to Steel structures like Gantry Trestle, Walk and Way and Handrails cross over, take up structures etc. as per the drawing of Scorpio Engineering Private Limited .It is further that the purchase order was placed for a total sum of Rs.9,39,40,000/-. The purchase order was thereafter amened and rate was increased including the total quality and the total sum of the purchase order was increased to Rs.11,20,64,000/- and Excise Duty as applicable at the time of dispatch etc. It is submitted that the goods for which purchase orders were placed by Scorpio Engineering Pvt. Ltd. upon the Operational Creditor were to be delivered to the consignee M/s IPCHL, who later changed its name with effect from 15th January, 2018 to M/s Hiranmaye Engineering Ltd.It is submitted that from the purchase order of 15th September, 2014, the terms and conditions of which remained the same even in the amended purchase order of 14th February, 2015 but has only the value and quantity was increased. M/s IPCHL being the consignee, for the delivery of the goods was to make direct payment within 15 days from the date of dispatch to the Operational Creditor in respect of the invoice raised. It is submitted that the copies of the purchase order dated 14th February, 2015 is annexed as Annexure-B.

6. It is further submitted that in term of the purchase order issued upon the Operational Creditor, the Operational Creditor supplied goods as per the purchase order to the consignee being IPCHL who later on changed its name with effect from 15th January, 2018 as Hiranmaye Engineering Limited, the Corporate Debtor herein. The invoices were raised pursuant to the goods supplied in regard to strict specifications of the purchase order. The Operational Creditor raised tax invoices addressed to the Corporate Debtor. In the said invoices the name of Scorpio Engineering Private Limited was mentioned. The invoices were raised from 02/12/2014 and the last invoice was raised on 9th March, 2016. The Corporate Debtor received all such invoices without any demur and protest. Invoices were also accompanied with weigh bill challan cum dispatch invoice. The goods were transported by Operational Creditor from its office at Rourkella to Haldia where the office/factory of the Corporate Debtor was situated.

7. It is submitted that the Corporate Debtor received all such goods in respect of the invoices without any demur or protest and never raised any dispute regarding the quality, standard and specifications of the goods supplied and accepted all the goods without any objection.

8. It is submitted that even in respect of such purchase order direct payment was to be made by the Corporate Debtor within 15 days from the date of dispatch of goods to the Operational Creditor. In respect of such purchase order goods were supplied as per strict specification to the Corporate Debtor and the Corporate Debtor accepted such goods without raising any dispute with regard to quality and specifications. In respect of goods supplied, the Operational Creditor raised bill for Rs.13,21,06,940/-. The last bill for Rs.5,19,221 was raised on 09.03.2016. All such invoices raised upon the Corporate Debtor were received by the Corporate Debtor without any demur or protest including Scorpio Engineering Private Limited from 22.05.2015 to 09.03.2016. The unpaid invoices has been annexed as Annexure-C.

9. It is submitted that in respect of bills raised payments were made from time to time. Out of total bills raised for Rs.13,21,06,940/- the Operational Creditor received total sum of Rs.7,86,32,182/- for Corporate Debtor. Even though as per the purchase order payments were to be made by the Corporate Debtor directly to Operational Creditor but Scorpio Engineering Private Limited out of its own volition by opening letters of credit and made payment for a total sum of Rs.90,67,353/- on various dates i.e. on 4th January, 2015, 2nd February, 2015 and 15th March, 2015 in five tranches. The balance payment of Rs.6,95,64,820/- was paid by the Corporate Debtor on various dates starting from 14th February, 2015. The last of such payment was made on 2nd February, 2016. A chart showing the total amount of bill raised and part payment received in respect of the particular invoices with dates are annexed as Annexure-D.

10. It is submitted that as it will be evident from the ledger account, it is evident that the parties used to maintain a present and continuous running account wherein the Corporate Debtor used to make part payment and on account of payment in respect of bills raised. The last of such bill was raised by the Operational Creditor upon the Corporate Debtor on 9th March, 2016. As parties used to maintain a running and continuous account and the Operational debt has not been paid till date by the Corporate Debtor, the Operational Creditor has a valid running and continuous cause of action against the Corporate Debtor to recover the Operational debt. It is pertinent to mention that the Corporate Debtor as well as Scorpio Engineering Private Limited have admitted in various minutes of the meeting held between the parties that the liability for payment of dues towards the goods supplied is completely that of the Corporate Debtor. By virtue of the minutes of the meetings dated 28th April, 2015 and 8th July, 2015, it was in unequivocal and unambiguous term agreed between the parties, i.e. the Corporate Debtor, Scorpio Engineering Private Limited and Operational Creditor that in respect of

any dues, the Corporate Debtor will make payment to the Operational Creditor for the bills raised. Even in the meeting of 8th July, 2015 it was also agreed that even if there is any dispute in regard to payment related dispute between IPCHL (the Corporate Debtor herein) after change of name and Scorpio Engineering Private Limited that the Corporate Debtor will directly make payment to the Operational Creditor. As such, from the minutes of the meeting of 28th April, 2015 and 8th July, 2015, the Corporate Debtor had admitted its liability towards the Operational Creditor and has promised to pay the dues of the Operational Creditor in respect of the bills raised for the goods supplied. Copies of the minutes of the meeting held no 28th April, 2015 and 8th July, 2015 are annexed as Annexure –E.

11. It is submitted that even though in another minute of 12th January, 2016, it was recovered that after dispatch of items Scorpio Engineering Private Limited and the Operational Creditor will visit the office of Corporate Debtor and the Corporate Debtor will released the balance amount to Scorpio Engineering Private Limited and Scorpio Engineering Private Limited will release the balance amount of the Operational Creditor through cheque. Such arrangement as per the minutes of 12th January, 2016 was never acted upon by any of the parties and the earlier arrangement as per the minutes of 28th April, 2015 and 8th July,2015 was always followed by the respective parties wherein, it is stated that IPCHL will directly make payment to the Operational Creditor in respect of the bills raised which was also in terms of the specific condition of the purchase order which forms the basis for transaction between the parties. Even the minutes of 12th January, 2016 was given a go bye by the Corporate Debtor itself by making payment thereafter even directly to the Operational Creditor on 2nd February, 2016. The Operational Creditor states that relevant bank certificate given by the banker of the Operational Creditor showing the details of the payment made by the Corporate Debtor and the last date of payment is annexed as Annexure-F.

12. It is submitted that the Operational Creditor is a registered organization under Micro, Small and Medium Enterprises Act,2006 Documentary evidence in support of such registration in favour of the Operational Creditor is annexed as Annexure-G.

13. It is submitted that as per the Operational Creditor, the entire dispatch was completed on 09.03.2016 and as per the terms of the purchase order, the Corporate Debtor was to make payment within 15 days from the date of dispatch. In spite of such completion of dispatch, the Corporate Debtor apart from making part payment as a result of present and continuous account being maintained between the parties has not paid the balance amount of Rs.5,34,74,758/- in principal to the Operational Creditor. Thereafter, various meetings were held between the parties whereby the Corporate Debtor assured and promised to clear of the operational debt of the Operational Creditor but in spite of such assurance no payment was made.

14. It is submitted that as such, finding no other alternative various demand letters were issued by way of emails by the Operational Creditor to the Corporate Debtor. Such emails are dated January 22,2017, February 16,2017, 20th April, 2017, December 14,2018 and April 19, 2018. In such letters the plight of the Operational Creditor was submitted to the Corporate Debtor and the fact that the Operational Creditor is a mere small scale unit suffering from financial crunch was also put forward to the Corporate Debtor. The Operational Creditor has arranged additional fund to complete such supply under the project and the Corporate Debtor in spite of being such big group was not making payment to the Operational Creditor as a result of which, the Operational Creditor was on the verge of shrinking. As such, through various emails demands were made to release payments due. Copies of such emails dated January 20, 2017, February 16,2017, 28th April, 2017, December 14, 2018 and April 19,2018 are annexed as Annexure-H.

15. It is submitted that on 19th April, 2018, the Corporate Debtor acknowledged its liability towards the Operational Creditor in favour of the dues and admitted the position that the matter is still not resolved and welcomed the Operational Creditor for resolving such dispute. As such, by writing email on April 19, 2018 at 1.10 P.M. the Corporate Debtor acknowledged the jural relationship between the parties. Copy of such email issued by the Corporate Debtor on April 19,2018 issued in the name of Operational Creditor is annexed as Annexure-I.

16. It is submitted that as such, from the said email dated April 19, 2018, it is an admitted position that IPCHL and Hiranmye Engineering Limited are the same entities because even after changing the name the Corporate Debtor was issuing email in its earlier corporate identity i.e. IPCHL.

17. It is submitted that the even though various emails were issued one thing is admitted that the Corporate Debtor never denied its liability to pay the sum due to the Operational Creditor being Rs.5,34,74,758/- and never contended that they are not liable to pay the said sum to the Operational Creditor.In fact, none of the emails were replied to and by one email of April 19, 2018 without disputing the amount due the corporate debtor welcomed the Operational Creditor for resolving the matter.

18. It is submitted that thereafter, several meetings were held between the parties till Januar,2019 but none of such meetings yielded any fruitful result. As such, as of date a sum of Rs.5,34,74,758/- is due as operational debt from the Corporate Debtor towards the Operational Creditor.

19. It is submitted that the Operational Creditor being a micro, small and medium scale enterprise under section 15 and 16 of the Micro, Small and Medium Enterprise Development Act,2006 is entitled to interest in

view of the failure on the part of the Corporate Debtor to pay the sum dues to the Operational Creditor at compound interest rate on monthly rent at the rate of three times of the bank rate notified by the Reserve Bank of India. As on date the notified rate of bank rate of Reserve Bank of India is 10.70% since the act of Micro, Small and Medium Scale Enterprise Development Act, 2006 is a special statute and the provisions of Insolvency and Bankruptcy Code, 2016 does not specify any particular rate of interest that can be claimed. The Operational Creditor is entitled to claim interest at the rate of three times of the bank rate notified by the Reserve Bank of India on monthly rent that has been calculated at 10.70% @ 12x3 calculated till 1.12.2018 which amounts to a total sum of Rs.7,86,32,182.00/- on and from 10th March, 2016. Thus in total adding the interest, the Corporate Debtor is liable to pay a sum of Rs. 12,77,86,304/- to the Operational Creditor. A chart showing the aggregate interest which the Corporate Debtor is liable to pay to the Operational Creditor in interest of unpaid invoices is annexed as Annexure-J.

20. It is submitted that the Corporate Debtor has never denied or disputed the invoices which are due and payable by them to the Operational Creditor. Moreover, such invoices were acknowledged in the "Form C under Rule 12(1) of the Central Sales Tax (Registration and Turn Over) Rules, 1957" . Copies of such forms are annexed as Annexure K.

21. It is submitted that the Operational Creditor i.e. Trident Fabricators Pvt. Ltd. herein submits that the Corporate Debtor company herein is indebted to the Operational Creditor for a total sum of Rs.12,77,86,304/- as on 10.03.2016. Therefore, Corporate Debtor Company is liable to pay total outstanding amount of Rs. 12,77,86,304./- which is further accruing on a day to day basis until the debt owed to the Operational Creditor is fully discharged. The circumstances and events leading to the filing of the present petition are substantiated in detail in the preceding paragraph hereunder, which

make out a clear case for initiation of corporate insolvency resolution process against the Corporate Debtor by this Adjudicating Authority as provided under the Insolvency and Bankruptcy Code, 2016.

22. It is submitted that since the parties used to maintain a running and continuous account, the default as of date is continuing and the Operational Creditor has a running cause of action against the Corporate Debtor and more so because of the email of the Corporate Debtor dated 19.4.2018, the Operational Creditor has a valid and running cause of action against the Corporate Debtor. In view of such unpaid operational debt, the Operational Creditor has served notice under section 8 of the IBC, 2016 upon the Corporate Debtor in its earlier name on 8th January,2019 which was received by the Corporate Debtor on 24th January, 2019. The Corporate Debtor has given a reply to such notice by letter dated 3rd February, 2019 whereby the Corporate Debtor attempted to raise defense on the ground that the Operational Creditor has no privity of contract with Corporate Debtor and as such the Corporate Debtor is not liable to pay money to the Operational Creditor. Further false and frivolous defense has also been raised in regard to the minutes of the meeting dated 12th January, 2016 by contending that it is the liability of Scorpio Engineering Private Limited to release payments of Corporate Debtor. Further, a false and frivolous defense has sought to be raised on the ground of arbitration pending between IPCHL and Scorpio Engineering Private Limited as Scorpio Engineering Private Limited did not successfully complete the project of IPC HL and for that IPCHL is not liable to pay money to the Operational Creditor as they are sub-contractor. In this aspect of the Operational Creditor states that from the terms of the purchase order a privity of contract in respect of payment liability of IPCHL towards Operational Creditor is evident. Further minute of meeting dated 12th January, 2016 was never acted upon between the parties as because even after such meeting admittedly the corporate debtor has itself given a go by such arrangement by making direct payment to the Operational Creditor on 2nd February,

2016 by banking mode.As such, IPCHL is now barred by the principles of estoppel and waiver to contend that the minute of 12th January, 2016 is a reason for not making payment to the Operational Creditor. In any ways, arbitration proceeding initiated between IPCHL and Scorpio Engineering Private Limited has nothing to do with the Operational Creditor since there is no such agreement or arrangement disclosed by the Corporate Debtor in its notice that the liability of IPCHL to make payment to the Operational Creditor as per the terms of the purchase order is dependent upon the fate of the arbitration proceeding initiated between the parties and such the pendency of arbitration proceeding cannot extinguish the liability of the Corporate Debtor to pay the money to the Operational Creditor. In fact, the reply notice of 3rd February, 2019 of the Corporate Debtor is false and frivolous in nature and fraud has been played upon this Adjudicating Authority by contending in paragraph 17 that the corporate debtor has filed proceeding under section 9 of the IBC, 2016 on 30th January, 2019 against the Operational Creditor and as such they are not liable to pay any money to the Operational Creditor. Such stand is false and frivolous and has been made to mislead this Adjudicating Authority and to defeat and delay the legitimate claim of the Operational Creditor. No such proceeding has ever been filed by the Corporate Debtor and the Operational Creditor calls upon the Corporate Debtor to give proof of such statement made n paragraph 17 of the reply notice. As such, fraud has been played as will be evident from the reply letter. As such, no cognizance should be taken as the Corporate Debtor has come up with unclean hands and its reply does not deserve to be accepted at all on merits. As such, the Operational Creditor stated that no valid pre-existing disputes have been raised by the Corporate Debtor in their reply notice. In fact, there is no pre-existing dispute between the parties. The defence raised is spurious, feeble, sham in nature and is moonshine and no cognizance should be taken of the same. Copies of the Demand Notice dated 8th January, 2019 issued by the Operational Creditor under Section 8 dated

08/01.2019 and reply notice dated 3rd February, 2019 is annexed as Annexure-L.

23. It is submitted that from the reply notice dated 3rd February, 2019 , the Operational Creditor first time came to know that IPCHL has changed its name to Hiranmaye Engineering Limited and as such similar notice for the sake of convenience and technicalities was sent to the Corporate Debtor in its new name on 12/02/2019 which is the Corporate Debtor has received on 14/02/2019. A copy of the said demand notice dated 12th February, 2019 along with postal track receipt and track record as annexed as Annexure-M.

24. It is submitted that in view of the facts and circumstances, the Operational Creditor is constrained to take action against the Corporate Debtor on failure of them to pay the admitted debts. As such, the Operational Creditor is compelled to move a petition under the Insolvency and Bankruptcy Code, 2016. Hence, the present petition.

25. In reply to the said petition, the Corporate Debtor in the main petition has submitted that the application has not been filed by an authorized person and therefore, the application is liable to be dismissed. It is further submitted that the Operational Creditor has not filed any affidavit under section 9 (3) (b), which is the mandatory requirement under the Code and therefore for this reason the application is liable to be dismissed on this ground alone. It is further submitted that there is no demand notice issued as per the provisions of the IBC, 2016 and the Rules and Regulation framed thereunder. It is submitted that the purported demand notice issued by the Operational Creditor is not in accordance Rules and Regulations and therefore, this application is liable to be dismissed at the very outset. It is submitted from the documents annexed with the application, it is clear and evident that there exists no privity of contract between the Operational Creditor and the Corporate Debtor and there can be no question of any liability

existing on the Corporate Debtor to make any payment whatsoever to the Operational Creditor and there cannot be any question of any default on the Corporate Debtor. Thus, this application is liable to be dismissed. It is submitted that the application is not maintainable on the ground of existence of pre existing disputes between the Corporate Debtor and the Scorpion Engineering Pvt. Ltd. that are also a subject matter of arbitration as is explained in detail in paragraph 12 in the reply. It is further submitted that the purported claim made by the Operational Creditor is Ex. facie barred by limitation and the petition is liable to be dismissed on this ground also.

26. While dealing with various allegations averments made in the application filed by the Operational Creditor,the Corporate Debtor replied as under:-

a. The Corporate Debtor had awarded a contract to Scorpio Engineering Private Limited (hereinafter referred to as "Scorpio") for works invoking designing, engineering, manufacturing, supply, erection commissioning in relation to a coal handling plant for a 3x150 MW Thermal Power Project in Haldia, West Bengal.

b. The Operational Creditor was a sub-contractor of Scorpio in the aforementioned project in Haldia. Scorpio issued the work order/ purchase order upon the Operational Creditor. Thus, there exists no privity of contract between Corporate Debtor and the Operational Creditor and hence the Operational Creditor is not an Operational Creditor is not an Operational Creditor of Corporate Debtor in any manner. Furthermore, at no point of time ever, no bills were raised on the Corporate Debtor by the Operational Creditor thereby once again proving the fact that there is no privity of contract between Corporate Debtor and Operational Creditor. The Operational Creditor has deliberately suppressed the fact that no contract was ever executed between Operational Creditor and Corporate Debtor and the Operational Creditor issued a demand notice under section 8 IBC, 2016 and filed the instant application under section 9 IBC, 2016 against the Corporate Debtor solely in order to harass Corporate Debtor and extort money out of Corporate Debtor and unjustly enrich itself at the expense of the Corporate Debtor without having any basis to do the same.

c. Furthermore, the purported demand notice was issued and the instant application was filed against the Corporate Debtor after willful suppression of documents by Operational Creditor. The Operational Creditor did not annex and describe the Minutes of the Meeting between Corporate Debtor, Operational Creditor and Scorpio dated 12th January, 2016, which is self explanatory on the terms of the payment and according to that Minutes of the meeting, Corporate Debtor is not responsible for the payments to Operational Creditor. The last agreed minutes of Meetings dated 12th January, 2016 stated that the Corporate Debtor will release the balance full due amount to DD/RTGS to Scorpio as per Contract and Scorpio will release the full balance amount of Operational Creditor / M/s Trident Fabricators Private Limited through cheque on the same day. Such suppression makes it plan and evident that the Operational Creditor is attempting to unjustly enrich itself at the expense of the Corporate Debtor by willfully ignoring the plan and evident from the fact that Corporate Debtor has no obligation to make any payment to the Operational Creditor and an obligation to pay the Operational Creditor. If any, lies on the part of the Scorpio. The Operational Creditor should make a claim against Scorpio for the purported work executed by Operational Creditor on behalf of Scorpio. Instead of proceeding against Scorpio who is in the employer of Operational Creditor, the Operational Creditor issued the purported demand notice and has filed the instant application against the Corporate Debtor in complete abuse of process of law.

d. The Corporate Debtor states that moreover, Scorpio did not successfully conclude its obligations under the contract executed between Corporate Debtor and Scorpio within the contract stipulated date of 20th March, 2015 for which Corporate Debtor has already suffered huge loss and damages. Since, Scorpio did not successfully conclude and/or fulfill its work and/or obligations under the contact, the logical conclusion is that the Corporate Debtor did not in any case ultimately receive the benefits it was contractually entitled to receive from Scorpio, hence, no question of any payment by the Corporate Debtor to any sub-contractor of Scorpio arises. This constitutes a pre-existing dispute(s) that is currently a subject matter of arbitration between the Corporate Debtor and Scorpio Engineering Private Limited.

e. The Corporate Debtor states that the Operational Creditor failed to supply the entire contracted amount of the goods it had agreed to supply in its capacity as a contractor of Scorpio/ under its contract and / or as per its understanding with Scorpio after 12th January, 2016 and there was a shortfall of around 32 MT between the goods purportedly dispatched and the goods actually received at the project site.

f. The Corporate Debtor state that work on the aforementioned coal handling plant had been hampered and delayed by, inter alia, the failure of Scorpio to pay its own sub-contractors engaged by itself in furtherance of its own objectives under the aforementioned contract. Therefore, it was decided in a meeting between the Corporate Debtor, the Operational Creditor and Scorpio, held on 12/01/2016 that the Corporate Debtor will make payment to Scorpio based on progressive realization of project targets and the same will be given to the sub contractors employed /engaged by Scorpio by Scorpio itself.

g. The Corporate Debtor states that the aforementioned coal handling plant for a 3x150MW Thermal Power Project in Haldia, West Bengal is a very important project for the Corporate Debtor. The pressing need for its smooth functioning and commercial success motivated the Corporate Debtor to make an advance payment to Scorpio to facilitate the payment of its sub-contractors. The sole objective of the Corporate Debtor behind doing so was ensuring that work on the aforementioned project is not hampered and delayed. The Minutes of Meetings dated 28th April, 2015, and 8th July, 2015, annexed by the Operational Creditor itself to the instant/ aforesaid Application filed against the Corporate Debtor and marked as Annexure-E therein, make it plain and evident the urgency the Corporate Debtor accorded to the successful and speedy completion of the aforementioned project and the Corporate Debtor stridently insisting on Scorpio and its sub contractors, which included the Operational Creditor, to perform their obligations and adhere to the agreed dispatch completion schedule.

h. It is extremely important to note the fact that the Corporate Debtor has already paid an excess amount of Rs. 88.07 Lakhs to Scorpio and there is absolutely no further liability on the Corporate Debtor to make any payment whatsoever to Scorpio to any sub-contractor of Scorpio. The issue is already in dispute. The Corporate Debtor has raised a counter claim for Rs.1290.91 against Scorpio and the issue/ dispute is being adjudicated through arbitration at the moment. The Operational Creditor is fully aware of the facts yet it is abusing the provisions of the Insolvency and Bankruptcy Code, 2016, by issuing the purported demand notice dated 8th January, 2019 and filing this instant application against the Corporate Debtor. In this connection true copies of the orders of the Sole Arbitrator making it plain and evident that there exists a pre-existing dispute between the Corporate Debtor and Scorpio are annexed as Annexure-A.

27. After going through all the pleadings of the parties made in the petition, it appears that the Operational Creditor has a good case to be tried in Civil Court but not before this Adjudicating Authority because the Corporate Debtor has raised so many issues regarding privitiy of contract with the Operational Creditor which cannot be sorted out or decided by this Adjudicating Authority in this matter of summary procedure. The prayers made in this application no. 770/2021, seeking directions upon the Corporate Debtor to file the various documents enumerated in the prayers clause of this application, it seems unusual for this Adjudicating Authority to support the Operational Creditor by permitting its prayer to be granted thereby allowing the Corporate Debtor to file all the documents favouring the Operational but to the detriment of the Corporate Debtor. This Adjudicating Authority has a very limited jurisdiction of looking at the petition containing the information relating to existing outstanding debt and default in repayment thereof by the Corporate Debtor. If the Corporate Debtor has committed a default,the Operational Creditor has to place all documents on record. This Adjudicating Authority has only to see the authenticity of the information and the documents for reaching a conclusion whether a case for admission of the petition or initiation of CIRP is made out or not. The prayer clause of the Operational Creditor seeking directions

upon the Corporate Debtor to produce all the documents by way of an affidavit, so that the Operational Creditor may prove its case against the Corporate Debtor is, to our mind, beyond our jurisdiction. Each Operational Creditor has to prove its own case. It cannot base its claim on the basis of documents to be produced by the opposite party and this Adjudicating Authority would not like to be passing such a direction upon the Corporate Debtor to facilitate the admission of petition filed by the Operational Creditor. I.A.No. 770/KB/2019 filed by the Operational Creditor seeking aforesaid directions, therefore, has no substance and cannot be accepted. The application is, therefore, dismissed.

28. Accordingly, IA(IBC)/770/KB/2021, is dismissed.

29. This Certified copy of the order may be issued to all the concerned parties, if applied for, upon compliance with all requisite formalities.

HARISH CHANDER SURI Digitally signed by HARISH CHANDER SURI Date: 2022.05.24 16:13:07 +05'30'

(Harish Chander Suri) **(Rohit Kapoor)**
Member (Technical) **Member (Judicial)**

Order signed on, this 24th day of May 2022

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