

**IN THE NATIONAL COMPANY LAW TRIBUNAL**  
**AHMEDABAD**  
**DIVISION BENCH**  
**COURT - 1**

ITEM No.302  
CP(IB) 587 of 2019

**Order under Section 9 IBC**

**IN THE MATTER OF:**

Shrimali Industries Pvt Ltd  
V/s  
KRN Alloys Pvt Ltd

.....Applicant

.....Respondent

**Order delivered on: 25/01/2024**

**Coram:**

Mr. Shammi Khan, Hon'ble Member(J)  
Mr. Sameer Kakar, Hon'ble Member(T)

**PRESENT:**

For the Applicant :  
For the Respondent :

**ORDER**

The case is fixed for the pronouncement of the order. The order is pronounced in open Court, vide separate sheet.

**-SD-**  
**SAMEER KAKAR**  
**MEMBER (TECHNICAL)**

**-SD-**  
**SHAMMI KHAN**  
**MEMBER (JUDICIAL)**

**BEFORE THE ADJUDICATING AUTHORITY  
NATIONAL COMPANY LAW TRIBUNAL  
DIVISION BENCH -I, AHMEDABAD**

**CP/IB/587/AHM/2019**

*(Application for initiation of Corporate Insolvency Resolution Process U/s 9 of the Insolvency & Bankruptcy Code, 2016 r/w Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016)*

In the matter of

**SHRIMALI INDUSTRIES PRIVATE LIMITED**

(CIN: U27109RJ2013PTC041685)

Behind Jama Masjid,  
Road No. 7, Bansi IInd Phase,  
Jodhpur.

**... Applicant/Operational Creditor**

**VERSUS**

**KRN ALLOYS PRIVATE LIMITED**

(CIN: U27106GJ2008PTC053542)

Jimmy Tower Shop No. 209,  
Opp. Gurukul GDL Road,  
Rajkot-360002.

**... Respondent/Corporate Debtor**

**Order Pronounced on 25.01.2024**

**CORAM :**

**SHAMMI KHAN, MEMBER (JUDICIAL)**

**SAMEER KAKAR, MEMBER (TECHNICAL)**

**Appearance:**

For Operational Creditor : Mr. Monaal Davawala, Ld. Adv  
a/w Mr. Yuvraj Thakore, Ld. Adv.

For Corporate Debtor : Mr. Devashish K Trivedi, Ld. Adv.

**O R D E R**

**(Per: Bench)**

1. This application is filed on 07.08.2019 under Inward Diary No. 8281 by one **M/s. SHRIMALI INDUSTRIES PRIVATE LIMITED** (hereinafter referred to as '**Applicant/Operational Creditor**') under Section 9 of the Insolvency & Bankruptcy Code 2016 (in short, '**IBC, 2016**') r/w Rule 6 of the Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016 against **M/s. KRN ALLOYS PRIVATE LIMITED** (hereinafter referred to as '**Respondent/Corporate Debtor**'). The Application is filed with prayer to initiate the Corporate Insolvency Resolution Process (hereinafter referred to as '**CIRP**'), appoint Interim Resolution Professional ("hereinafter referred to as '**IRP**') and declare moratorium with respect to the Corporate Debtor.
  
2. Part-I of the application reveals that the Applicant is one Shrimali Industries Private Limited having CIN No. U27109RJ2013PTC041685. The registered office of the

Applicant is situated at Behind Jama Masjid, Road No.7, Bansi IInd Phase, Jodhpur, Rajasthan.

3. The affidavit for filing this application has been affirmed by one Mr. Chandan Chanderkant Dave - Authorized Representative, duly authorized vide Board Resolution dated 25.04.2019.
4. Part-II of the application reveals that the Respondent is one M/s. KRN Alloys Private Limited, having CIN: U27106GJ2008PTC053542 was incorporated on 09.04.2008. The registered office of the Corporate Debtor is situated at Jimmy Tower Shop No. 209, Opp. Gurukul, GDL Road, Rajkot-360002.
5. Part-III of the application reveals that the Applicant has proposed Mr. Dakshesh Pravinchandra Choksi, having Reg. No. IBBI/IPA-001/IP-P00718/2017-2018/11300 to act as Interim Resolution Professional (“**IRP**”).
6. Part-IV of the application reveals that the Applicant has supplied the raw materials (MS Scrap) to Respondent from time to time and raised various invoices from 01.04.2018 to 21.07.2018 for an amount aggregating to

Rs.14,30,29,693.71. As on 30.04.2019 the total debt as claimed is Rs.1,45,26,559.57/- (Rs.1,24,62,074.57 as principal amount plus Rs.20,64,485/- as interest) at the rate of 12% p.a. The details of the operational debt payable by the Respondent as on 30.04.2019 are reproduced hereunder:-

<b>Particulars</b>	<b>Amount in Rs.</b>
<b>Financial Year 2018-19</b>	
<b>Opening Balance as on 01-04-2018 (Debit/Receivable)</b>	3,97,89,609.26
<i>Add: Sales made to KRN Alloys Pvt ltd during the FY 2018-19 (Total Number of Sales Invoices are 191)</i>	14,30,29,693,71
<i>Less: Purchases made from KRN Alloys Pvt Ltd during FY 2018-19</i>	87,57,228.40
<i>Less: Net Payment Received from KRN during FY 2018-19</i>	16,16,00,000.00
<b>Total Amount of Principal Outstanding as on 30-04-2019 (Debit/Receivable)</b>	<b>1,24,62,074.57</b>

7. It is stated that the goods supplied by the Applicant were duly received and consumed by the Respondent. After supplying the goods, certain invoices were raised by the Applicant which were duly acknowledged by the Respondent without any kind of dispute or demur.

However, Respondent kept delaying the payment on one or the other pretext despite several reminders.

8. It is stated that since the Respondent did not pay the outstanding amount, the Applicant was compelled to issue a demand notice under Section 8 of the IBC, 2016. Accordingly, a demand notice in Form-3 was issued on 01.05.2019 to the Respondent by registered post. The said notice has been duly served upon the Respondent on 10.05.2019 and tracking report is annexed at Annexure-F at page no. 565 of the application.
9. It is stated that on receipt of the demand notice, the Respondent on 27.05.2019 sent a reply raising the dispute with respect to the rate already agreed between them. The Respondent sent a reply with a view to create a picture that the dispute exists which is nothing but false, bogus, vague and afterthought and deserves to be rejected.
10. The petitioner has relied upon the following documents:-
  - a) *Copies of Invoices raised by Operational Creditor on Corporate Debtor*
  - b) *Ledger Accounts from April 2018 till date*

- c) *Copy of Statement of interest calculation up to 30<sup>th</sup> April, 2019.*
- d) *Demand Notice issued under Form-3 Acknowledgment Slip and Delivery Report.*

11. Reply under Inward Diary No. 13031 dated 18.11.2019 was filed by the Respondent. In the reply it is stated that:-

- A. The person who has signed this application is not properly authorised.
- B. Upon receipt of demand notice dated 01.05.2019, the Respondent duly replied vide letter dated 27.05.2019 to the petitioner.
- C. Shri Dinesh Vyas – Director of Applicant Company (M/s. Shrimali Industries Private Limited) is holding another proprietorship firm M/s. Shrimali Alloys, which was also the supplier of raw materials to the Respondent herein. Mr. Dinesh Vyas, as proprietor of Shrimali Alloys also raised a Demand Notice/Invoice dated 04.03.2019 demanding payment in respect of unpaid operational debt due to M/s. Shrimali Industries Pvt. Ltd. While submitting reply dated 21.03.2019 to demand notice dated 04.03.2019, the Respondent has clarified case of M/s. Shrimali Industries Pvt. Ltd., in detail. Respondent relies upon the reply to

demand notice to Shrimali Alloys. Copy of which is annexed as Annexure-4 of this reply.

- D. As per Form-5, the total amount in default is Rs.1,45,06,559.57 (Principle Rs.2,24,62,074.57 + interest Rs.20,64,485/-). As per Form-5 the said default/due amount is undisputed. In the instant case notice in Form-3 is dated 01.05.2019 was delivered to Respondent on 10.05.2019. However, while filing reply dated 21.03.2019 to Form-3 issued by M/s. Shrimali Alloys, the Respondent had already disputed not only the alleged due pertaining to M/s. Shrimali Alloys but also the alleged amount pertaining to Applicant herein. Thus, the fact remains that before service of notice in Form-3 in the present case, the alleged due amount or debt which has fallen due was disputed by the Respondent. Therefore, the petition deserves to be quashed and set aside.
- E. Mr. Chandan Dave who was claimed to be authorized person of M/s. Shrimali Industries Pvt. Ltd., executed and handled the entire business of Applicant with the Respondent herein. Same Mr. Chandan Dave also handled business of M/s. Shrmali Alloys and M/s. Vaibhav Enterprises with the Respondent. Although these firms/companies belong to Mr. Dinesh Vyas (where he is one of the Directors or proprietor) wherein Mr. Chandan Dave used to deal with the Respondent.

- F. Being a large-scale buyer, the Respondent used to open area-wise rates of MS Scrap and circulate to various suppliers of MS Scrap. The Respondent by considering the requirement of MS Scrap in the plant and prevailing demand during the period, determined the purchase rate of MS Scrap for different quality of the MS Scrap. The different rates for different quality of MS Scrap are being circulated amongst suppliers of the MS Scrap by posting system-based bulk messages also. Some suppliers who are not in the broadcast list are being communicated about the rates separately.
- G. The supplier of MS Scrap used to contact the representatives of the Respondent and offer their quality and quantity of MS Scrap for supply. The negotiation and confirmation were being done telephonically and no written records thereof were generally being maintained. However, brief records with regard to the name of supplier/party, quantity (either in tons or number of vehicles) and rate agreed were maintained.
- H. Based on confirmed/agreed terms, the supplier used to supply material. On arrival of the material, the following checks were being conducted/examined by Respondent:
- i. Documents- invoice, transport documents, E-way Bills.

ii. Inspection of quality of the raw material, as against the conformed terms and conditions of supply with regard to quality, by the responsible representative of Respondent herein.

iii. In case when the quality of the supplied MS Scrap found other than as against the confirmed terms and conditions of supply, unloading of the material was put on hold and the supplier was being contacted to intimate the description in the quality of the material after discussion and as agreed/confirmed rate of the material supplied was being re-negotiated and confirmed based on the quality of the material. Accordingly, the material were unloaded and final payment were made based on the price re-negotiated considering the actual quality of material supplied.

iv. The difference of price is being either adjusted in the rate of next supply or by issuing debit note.

I. Among many others, there were following five suppliers, who supplied MS Scrap to the Respondent during the period from 2013-14 to 2018-19:

a) M/s. Shrimali Industries P. Ltd., Jodhpur;

- b) M/s. Shrimali Industries P. Ltd., Gandhidham;
- c) M/s. Shrimali Industries P. Ltd., Unit-II Gandhidham;  
[the above three firms are Petitioner herein]
- d) M/s. Shrimali Alloys, Gandhidham (Branch at Rajkot)
- e) Vaibhav Enterprises, Jodhpur.

The above firms are either proprietary firms of Mr. Dinesh Vyas or private limited companies, wherein Mr. Dinesh Vyas is one of the Directors.

- J. Mr. Chandan Dave, who claimed to represent himself as the authorised person of above the mentioned firms of Mr. Dinesh Vyas, used to contact the representative of Respondent for the supply of MS Scrap from all the above-mentioned firms. In case there were any discrepancies in quality found during the inspection, the same were explained to Mr. Chandan Dave. In this case, the differential amount was adjusted in the next supply or as advised by Mr. Chandan Dave, payment of differential amount was put on hold pending final negotiation and issuance of debit notes. The Respondent carried out business with the above-mentioned firms, through their authorised person Mr. Chandan Dave since 2013.
- K. During 2017-18 and 2018-19 issues of discrepancies in quality as against agreed/confirmed terms of quality were suddenly raised, in as much as, MS Scrap supplied were

found highly inferior in quality as against the terms agreed. These discrepancies were mainly observed in respect of supplies made from the Applicant. Mr. Chandan Dave commenced supply from M/s. Shrimali Industries Pvt. Ltd. from December 2017. These discrepancies were brought to the notice of Mr. Chandan Dave. Mr. Chandan Dave primarily agreed with the discrepancies as well as the consequent price of the material after deduction on account of inferior quality of material. Mr. Chandan Dave requested to hold proportionate differential amount arise on account of quality of material supplied, and he shall visit the factory of Respondent and the same shall be negotiated.

- L. During the period 2017-18 and 2018-19, Mr. Chandan Dave becomes a major supplier of MS Scrap. The lower quality of MS Scrap supplied by him was affecting the quality of production in terms of its chemical composition. Due to which the cost of production became high which raised losses. The said facts were communicated to Mr. Chandan Dave and time and again he accepted the factual position and repeatedly confirmed that the said losses shall be compensated along with differential amount raised on account of quality issue. Accordingly, payment of an appropriate amount attributed towards, quality difference and consequent losses were kept on hold under due

intimation and confirmation of Mr. Chandan Dave. Mr. Chandan Dave was under constant telephonic communication on almost daily basis for obtaining order and discussion of quality issues as well as regarding factual position of the consequent losses on account of inferior quality. Since he was aware about the amount which was kept on hold, during the period of time, he never called Respondent to clear outstanding.

- M. During the period of July 2018, an offence case was booked by the Directorate General of GST Intelligence, Jamshedpur against Mr. Dinesh Vyas for GST evasion. During the investigation, Mr. Vyas and his firms were found to be involved in huge GST evasion, therefore, he was arrested and was sent to judicial custody. Mr. Vyas was granted bail on 25.09.2018. After July 2018, the supply of material to Respondent from all firms was stopped. A detailed statement of accounts showing differential amount on account of quality of supplied material as well as consequent losses incurred due to use of such inferior material was prepared and informed to Mr. Chandan Dave. Meanwhile, Mr. Chandan Dave, requested to release some payment. Mr. Chandan Dave was informed to come down to settle the account and the entire due, if any, after adjusting the differential amount arise on account of quantity issue and

consequent losses shall be paid immediately. However, since a considerable quantum of business involving more than Rs.100.00 crores were undergoing, tentative amount payable was worked out and payment thereof was made in July 2018. Although a sum of around Rs. 4.30 crores was payable, as the operational creditor was in need of money in order to pay GST, a sum of Rs.5,80,22,541/- (adhoc) was paid to these firms during July 2018. Thus, an amount of Rs.1.50 crores was paid in addition to what was payable.

N. On 03.09.2018, Mr. Chandan Dave visited the factory premises of Respondent and detailed negotiation in respect of the amount deducted (debited) from bill amount on account of supply of inferior quality of material. Based on the outcome of the discussion, detailed invoice wise worksheet were prepared and submitted to him which was acknowledged by him by putting seal of the representative firms of Mr. Dinesh Vyas. Account status of all firms/companies of Mr. Dinesh Vyas were shown to Mr. Chandan Dave as under:-

“...(ii) There is excess payment of Rs.7,17,368/- to M/s Shrimali Industries Pvt. Ltd., Gandhidham which required to be repaid to Respondent.

(iii) With regard to M/s. Shrimali Ind Pvt. Ltd., Jodhpur, as discussed herein above, there was an adjustment of Rs.58,40,533/- against supply of total Rs.5,29,53,431/- towards supply of inferior quality of material. Accordingly, Rs.57,79,825/- remained payable to M/s. Shrimali Ind. Pvt. Ltd., Jodhpur.

...(v) With regard to the petitioner herein, as discussed herein above, there was an adjustment of Rs.0.58 crore against the supply of total Rs.131.40 crores towards supply of inferior quality of material. Accordingly, NIL amount remained payable to petitioner herein. A detailed invoice wise statement of debit notes showing billed amount, amount deductible on account of inferior quality was prepared and was provided Mr. Chandan Dave which he acknowledged by putting seal of the firm. Copy of the same is annexed as Annexure-R5 of this reply.”

After the discussion of detailed worksheets, a further discussion was made on account of losses incurred due to inferior quality of material and resulted into process losses, a tentative amount to be compensated was decided to be Rs.2,00,00,000/-.

- O. Mr. Chandan Dave, after concluding the discussion, requested some time to decide the mechanism to settle the account with regard to the amount deductible for supply of inferior quality through debit notes. However, he requested to re-negotiate the losses incurred due to inferior quality of material and resulted into process losses. After being released on bail, Mr. Dinesh Vyas a.w. Mr. Chandan Dave visited the office of the Respondent at Beawar on 06.10.2018 to re-negotiate the said. Thereafter, no effective communication was made from either side.
- P. On 30.11.2018, Respondent received e-mail from Mr. Chandan Dave wherein he submitted account statements of all the firm/companies without incorporating the amount of debit notes arisen out of quality issue and compensation consequent losses, as communicated to him and sought confirmation of the said account. Immediately, Mr. Chandan Dave was contacted and asked the reason for deviation from agreed/confirmed stand on amount to be adjusted towards quality issue and compensation, however, he did not respond. Therefore, an email response was communicated on 14.12.2028 that **“we do not confirm the balance”**, was forwarded. A copy of said mail is annexed as Annexure-R6 of this reply. The true and correct position with regard to firms of Mr.

Dinesh Vyas which were operated and handled by Mr. Chandan Dave are as under:-



Name of Supplier firm	2013-14	2014-15	2015-16	2016-17	2017-18	2018-19
Shrimali Alloys					125697736	108351841
Shrimali Industries P Ltd Jodhpur	5404751	147636857	138648661	175470677	17291160	35062271
Shrimali Industries P Ltd Gandhidham				89450874	608020233	108339302
Shrimali Industries P Ltd U-II Gandhidham				2169500	6127047	
Vaibhav Entrepriase			42533569	12383784	4323569	15472541
	5404751	147636857	181182230	279474835	761459745	267825955

  

	Total Amount (Above table)	Amount deductible toward inferior quality	Net Payable	Amount Paid	Net Balance
Shrimali Alloys	234049577	33920624	200128953	200128953	0
Shrimali Industries P Ltd Jodhpur	520114377	5840533	514273844	508494019	5779825
Shrimali Industries P Ltd Gandhidham	805810409		805810409	806527777	-717368
Shrimali Industries P Ltd U-II Gandhidham	8296547		8296547	8296547	0
Vaibhav Entrepriase	74713463		74713463	74713463	0
	1642984373	39761157	1603223216	1603223216	5062457
A Total amount billed toward supplies of MS Scrap by all five firms					1642984373
B Amount deductible toward inferior quality in respect of supplies from M/s Shrimali Alloys and M/s Shrimali Ind P Ltd.					39761157
C Net payable against supply of MS Scrap by all five firms					1603223216
D Payment made through banking system AND Amount receivable toward sale of material to these firms					1597443391
G Balance payable					5062457
H Amount attributed toward losses incurred due to inferior quality of material and resulted into process losses.					20000000
I Net PAYABLE/RECEIVABLE					(-)14937543

The actual position is that an amount of Rs.1,49,37,543/- is receivable by Respondent from all firms/companies of Mr. Dinesh Vyas.

Q. Further, adjustment of losses were distributed amongst these firms/companies based on quality supplied and final position of account status was once again communicated to Mr. Dinesh Vyas for

all firms vide letter dated 22.06.2019. A copy of the said letter is annexed as Annexure-R7 of this reply. Books of Account of Respondent were maintained showing invoice-wise debit notes. All debit notes issued against each of the invoices wherein there were supplies of inferior quality are properly accounted for in the Books of Accounts of Respondent. The statutory auditor and Chartered Accountant scrutinized and audited the accounts of M/s. Shrimali Alloys, M/s. Shrimali Industries Pvt. Ltd., and Vaibhav Enterprises all firm/companies of Mr. Dinesh Vyas in the book and accounts of Respondent along with relevant documents, such as invoices, debit notes, payment and their proper entries in respective of accounts. The statutory auditor and Chartered Accountant certified copies of account of the petitioner in the Books of Account and account of the Respondent as well as each debit note issued by Respondent as well as each debit note issued by the respondent, supported by a certificate of Chartered Accountant & statutory auditor of Responded.

- R. A required note, which forming part of the audited financial statement, is also incorporated in the 11<sup>th</sup> Annual Report (F.Y. 2018-19) of Respondent at para 3.18.1. The same is as under:-

3.18.1 The following proprietorship concern and private limited company filed petition under The Insolvency and Bankruptcy Code, 2016 before National Company Law Tribunal, Ahmedabad Bench which are not acknowledge as debt by the Company.

Name of concern	Amount claimed under petition			Amount Payable / (Receivable) as per Audited Financial Statement		
	Principal	Interest	Total	Principal	Interest	Total
Shrimali Industries Pvt. Ltd Jodhpur, Rajasthan				2616325	0	2616325
Jodhpur Unit				(15953867)	0	(15953867)
Gandhidham Unit						
<b>Total</b>	<b>12462074</b>	<b>2064485</b>	<b>14526559</b>	<b>(13337542)</b>	<b>0</b>	<b>(13337542)</b>
Shrimali Alloys (Proprietor – Dinesh Vyas) – Gandhidham, Kutch (Gujarat)	33130538	5857332	38987870	(1100000)	0	(1100000)
Vaibhav Enterprises (Proprietor – Dinesh Vyas) Jodhpur, Rajasthan	476253	401137	877390	(523747)	0	(523747)
	<b>46068866</b>	<b>8322954</b>	<b>54391820</b>	<b>(14961289)</b>	<b>0</b>	<b>(14961289)</b>

S. The officer of Rajasthan Goods & Service Tax had visited the factory premises of Respondent at Raipur and conducted a survey and scrutiny of records maintained by Respondent. The officer observed that there were entries of various debit notes during the period 2017-18 and 2018-19 in the Books of Account of Applicant and Respondent. The GST officer observed that Respondent had taken input credit of entire amount of GST shown in invoices, whereas when debit notes were issued the proportionate input credit was required to be paid back, which was not found paid by Respondent. Thereafter, two Show Cause Notices were issued to Respondent. A copy of Show Cause Notices is annexed as Annexure R-9(i) & R-9(ii). In this regard, the fact about the debit notes issued by Respondent from time to time to M/s. Shrimali Alloys and M/s. Shrimali Ind. Pvt. Ltd., both firms

of Mr. Dinesh Vyas, are duly acknowledged by the Officer of GST and they commenced proceeding for the recovery of GST arose on account of the issuance of these debit notes. Due to serious offence case booked by the Directorate of GST Intelligence, these firms of Mr. Dinesh Vyas were under tremendous pressure to clear their liability of GST, consequential penal action and prosecution. Therefore, they indulged in fraudulent means to threaten the firm, with whom they conducted business, and extract money, which is not due and payable to them, by way of filing the present petition by manipulating their books and accounts.

- T. There is no even a single evidence available to show that M/s. Shrimali Alloys had ever asked Respondent to pay-up their outstanding during the entire prior to issuance of Form-3.
- U. In the present petition, there is no mention regarding the statement of debit notes raised against each of the invoices, under which inferior quality was supplied, as well as process loss of Rs.2.00 crores to be paid by the various firms of Mr. Dinesh Vyas to Respondent which was acknowledged by Mr. Chandan Dave on 03.09.2018 which led to suggest that they are, not in position to as well as have no reason to, deny the same.

- V. It is worth to apprise here that in the normal course of business if an amount of Rs.3,31,30,538/- (pertaining to supplies made during 2017-18 and 2018-19) was outstanding to receive from any company to whom materials were supplied, there must be some communication with regard to the outstanding and request for payment of such dues. In the instance case, there is no evidence available even with the petitioner that for a single time petitioner had asked the Respondent to pay up their outstanding. The petitioner, for the first time, asked the Respondent for the claimed amount when the demand notice in Form-3 was forwarded to Respondent.
- W. Business with firms of Mr. Dinesh Vyas was undergoing since 2013-14 and a considerable size of business was made to the tune of Rs.164.29 crores. It is obvious, that at least one time they should come forward to Respondent and asked to clear their dues, before sending statutory notice/demand notice. However, in case they might ask to repay dues, there certainly be a reply that there is no outstanding payable to them by Respondent. Accordingly, there is no amount payable to the petitioner. The true and correct position of the account of M/s. Shrimali Alloys in the books of accounts of Respondent is as under:-

<i>Total amount of invoices for supply of MS Scrap during 2017-18 &amp; 2018-19</i>	<i>133.41 Crores</i>
<i>Amount receivable toward sale of material to the Petitioner</i>	<i>0.029 Crores</i>
<i>Amount of payment made</i>	<i>133.81 Crores</i>
<i>Amount of Debit Notes issued for inferior quality</i>	<i>0.5840 Crores</i>
<i>Amount of Debit Notes issued for compensation of losses of inferior quality</i>	<i>0.1678 Crores &amp; 0.1485 Crores</i>
<i>Net payable/Receivable (-)</i>	<i>(-1.33) Crores</i>

Thus, in fact, an amount of Rs.1.33,37,542/- is receivable from the petitioner as per the books and account, as explained hereinabove.

12. In response to the reply filed by the Respondent, the Petitioner filed a Rebuttal Affidavit under Inward Diary No. 8838 dated 28.10.2020 stating that:-

A. The response given by the Respondent with respect to the demand notice in the case of another company is completely irrelevant as far as the petitioner is concerned. The petitioner is not

particularly concerned as to how the Respondent has conducted business with other parties, including the said Mr. Chandan Dave in his individual capacity and is concerned only with its unpaid operational debt. The entire story concocted by the Respondent is completely irrelevant inasmuch as the law itself gives separate legal status to each and every company/entity even if it is run by the same person. There is no law in existence which states that the same person cannot be in charge of multiple entities. The present petition pertains to the claim of Shrimali Industries Pvt. Ltd. with respect to KRN Alloys Pvt. Ltd. and the petitioner is only concerned with the said claim.

- B. The Respondent may refrain from making loose statement as have been made throughout its entire reply, specifically paragraphs 6.22, 6.23, 8.1, 8.4, 8.5, 13.5 and 13.6; the petitioner puts the Respondent to strict proof thereof. The Respondent as such has been very forthcoming with annexing proof but has been conspicuously silent with respect to the statements being attributed to the petitioner.
- C. Even if it is assumed without admitting that Mr. Dinesh Vyas was involved in any GST evasion, then there is a specific and separate law to deal with the same.

- D. The Respondent conveniently stated that debit notes were issued and thus no outstanding was pending which was duly acknowledged by the petitioner. In fact, there is no such detailed sheet exists and the so-called acknowledgement by putting seal of the firm is completely fraudulent and no such deal of the firm exists or has existed in the past. This Tribunal may take serious view of the Respondent's conduct of putting forged documents under oath on the record.
- E. The Respondent itself admits that the account statement from the petitioner made no mention of the so-called debit notes as said to have been discussed and accepted by the petitioner towards "losses incurred due to inferior quality of material".
- F. In response to the paragraph 10 of the reply, it is submitted that the petitioner wonders as to why if the averments made are in fact true that the Respondent has not initiated any proceedings for recovery of the same from the petitioner or even reminded the petitioner to make outstanding payment as alleged.
- G. In response to paragraph 12 of reply, it is stated that Respondent itself stops short of admitting that the debit notes are complete moonshine. The fact that the Respondent has sought to create fake debit notes thereby extinguishing its debt has come to

the knowledge of the GST Department which was accordingly issued show casue notice/s to the Respondent and it has reserved the input tax credit availed at the time of making sales to the petitioner. Accordingly, this itself proves that assertion of the petitioner that these so-called debit notes exist nowhere except for the Respondent's accounts.

- H. With respect to paragraph 11 and 13, it is submitted that again the petitioner is not particularly concerned as to how the Respondent has drawn up its own books of accounts. It is matter of practice that the auditors draw up the books of accounts in accordance with the explanations it has received from the client. Accordingly, the fact that the Respondent's books of accounts are certified by its auditor proves nothing except for the fact that the books of accounts are drawn up to the satisfaction of the Respondent.
- I. The Corporate Debtor for want of anything substantial to defend itself, has resorted to beating around the bush and raising feeble technical arguments while not answering the primary issue at hand i.e., default in payment of outstanding invoices. Thus, the petition deserves to be admitted.

13. The Respondent filed orders of GST Department vide Diary No. D1822 date 05.04.2022, written submission vide Diary No. D2863 dated 30.05.2022, order of NCLT Court-II vide Diary No. D3901 dated 12.07.2022 and synopsis vide Diary No. D6117 dated 23.11.2022. We have gone through the same. The Respondent has relied upon the following judgments:

- a) *Mobilox Innovations Private Limited Vs. Kirusa Software Private Limited [Civil Appeal No. 9405 of 2017]*
- b) *Sangeeta Goel Vs. Riodec India Chemicals Private Limited [Company Appeal (AT) (Insolvency) No. 17 of 2020]*
- c) *Shelendra Kumar Sharma Vs. DSC Ltd. [Company Appeal (AT) (Insolvency) No. 1459 of 2019]*
- d) *S.S. Polymers Vs. Kanodia Technoplast Limited [Company Appeal (AT) (Insolvency) No. 1227 of 2019]*
- e) *Shrimali Alloys Vs. KRN Alloys Private Limited [CP(IB) 430 of 2019]*

14. We have heard the counsels for both sides and perused the material on record. It is not in dispute that goods were supplied by the petitioner to the respondent.

15. From the records, it is seen that the Applicant was dealing with Respondent through its various firms and companies.
16. It is also seen that none of the parties have presented before us any written purchase orders.
17. Reply to the demand notice was delayed, however, in reply the Respondent has relied upon a reply to demand notice sent by another firm Shrimali Alloys.
18. Shrimali Alloys has earlier filed a petition under Section 9 of IBC, 2016 being CP(IB) No. 430 of 2019 against the same Respondent which was decided by this Tribunal on 01.06.2022 and the said application was rejected.
19. Respondent has raised certain debit notes for inferior quality of goods and has uploaded the same on GST portal. As a proof of the same the relevant returns were placed before us and the fact is captured in para 10(S).
20. On perusal of the records it is found that the corporate debtor has contended that the applicant had supplied inferior quality scrap and but raised invoices of higher quality products. Mr. Chandan Dave from the applicant

firm had visited the factory of the corporate debtor on 03.09.2018 and had accepted all the debit notes issued by the corporate debtor towards price difference and compensation of loss suffered due to poor quality of goods. As a token of his acceptance, Mr. Chandan Dave has affixed rubber stamp of the applicant firm on the work sheet of debit notes. Said debit notes are accounted for in the balance sheet and in the 11th Audit Report of 2018-19 of the corporate debtor. Further, the auditor has mentioned that after considering the debit notes, net amount receivable by the corporate debtor from all the five firms/companies of the applicant would be Rs. 1,49,61,289/- and the amount receivable from the applicant would be Rs. 11,00,000/-. All the debit notes are entered in the ledger account based on which the Goods & Service Department had issued two different show-cause notices to the corporate debtor demanding differential input-tax credits availed on the basis of the invoices of the applicant. Further, the Applicant had sent incorrect accounts by email dated 30.11.2018, 06.12.2018 and 13.12.2028 asking the Respondent to

confirm the same. The corporate debtor had categorically denied to accept the said accounts and in reply to various emails of the applicant, Corporate Debtor had raised dispute dated 14.12.2018 which reads as under:

“Balance not confirmed”

The said email is prior to issuance of notice under Section 8 of the Code. The corporate debtor had also raised dispute while replying to said statutory notice and contested the debt.

21. From the above discussions it is clear that a dispute was in existence prior to issuance of the statutory demand notice under Section 8 of the Code. There is sufficient evidence to prove the pre-existence of dispute. We are supported by the judgement of the Hon'ble Supreme Court in the matter of **“Mobilox Innovative Private Limited Vs. Kirusa Software Private Limited”** that in case of genuine dispute raised by the corporate debtor, the application cannot be admitted, the relevant para is reproduced hereunder:

*“40. It is clear, therefore, that once the operational creditor has filed an application, which is otherwise complete, the Adjudicating Authority must reject the application under Section 9 (5) (2) (d) if notice of dispute has been received by the operational creditor or there is a record of dispute in the information utility. It is clear that such notice must bring to the notice of the operational creditor the ‘existence’ of a dispute or the fact that a suit or arbitration proceeding relating to a dispute is pending between the parties. 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 defence which is mere bluster. However, in doing so, the Court does not need to be satisfied that the defence 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.”*

22. Under the facts and circumstances and as discussed above, in our view, the instant application cannot be considered for admission and needs to be rejected. The instant application stands rejected and disposed off.
23. A certified copy of this order may be issued, if applied for, upon compliance with all requisite formalities.

**-SD-**  
**SAMEER KAKAR**  
**MEMBER (TECHNICAL)**

**-SD-**  
**SHAMMI KHAN**  
**MEMBER (JUDICIAL)**

Rajeev/P.S.