

**IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH (Court- II)
KOLKATA**

CP(IB) No. 848/KB/2019

A petition under section 9 of the Insolvency and Bankruptcy Code, 2016 read with rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016.

And

In the matter of:

Shri Rajesh Kumar Bihani and **Shri Tarun Bihani**, under the name and style of '**Ramesh Co.**', a registered partnership firm within the meaning of Indian Partnership Act, 1932, carrying on business from 2, N.C. Dutta Sarani, Sagar Estate, 4th Floor, Kolkata- 700001, in the State of West Bengal.

.....Operational Creditors

-Versus-

Imperial Tubes Private Limited, a company incorporated under the Companies Act, 1956 and being a company within the meaning of Companies Act, 2013 and having Corporate Identification No-U19202WB1981PTC033712 and its registered office at 2, N.C. Dutta Sarani, Sagar Estate, 5th Floor, Kolkata- 700001, in the State of West Bengal.

.... Corporate Debtor

Date of Hearing : 21st July, 2022

Date of pronouncing the order: 1st September, 2022

Coram:

Shri Rohit Kapoor, Member (Judicial)

Shri Balraj Joshi, Member (Technical)

Appearances (via video conferencing/ physical):

For Operational Creditors : Mr. Soumabho Ghose,, Advocate

For Corporate Debtor : Mr. Rajarshi Dutta, Advocate
Mr. Debjyoti Saha, Advocate
Ms. Vidhi Sharma, Advocate

ORDER

Rohit Kapoor, Member (Judicial):

1. This Court convened through hybrid mode.
2. This is a Company Petition filed under section 9 of the Insolvency and Bankruptcy Code, 2016 (the Code) by **Shri Rajesh Kumar Bihani** and **Shri Tarun Bihani**, under the name and style of '**Ramesh Co.**' (Operational Creditors), seeking to initiate Corporate Insolvency Resolution Process ("CIRP") against **Imperial Tubes Private Limited** ("Corporate Debtor").
3. The Corporate Debtor is a private company incorporated on 28.05.1981. The authorized share- capital of the company is ₹10,00,00,000/- and the paid up share- capital of the company is ₹9,76,34,820/-
4. The total amount claimed by the Operational Creditors is ₹8,75,22,385/-. The default occurred on 18.02.2016. The Demand Notices under section 8 of the Code was sent on 19th December, 2018 and 8th March 2019, the reply to the same was sent on 1st January, 2019 and 1st April, 2019 respectively.
5. **Submissions on behalf of the Operational Creditors:**
 - 5.1 The case of the Operational Creditors is that on the basis of an understanding and arrangement between the Operational Creditors and the Corporate Debtor, the Operational Creditors had duly supplied materials *i.e.* HR Coils/sheets/plates (hereinafter referred to as "the said

goods") to the Corporate Debtor and raised invoices for the same which became due and payable within reasonable period of 30 days.

5.2 As per the commonly accepted industrial practice, the Corporate Debtor would issue orders to the Operational Creditors verbally. In terms of the said orders, the Operational Creditors sold, supplied and delivered to the Corporate Debtor the entire quantity of the said goods required by it. The said goods were supplied as per the specifications of the Corporate Debtor.

5.3 The Corporate Debtor received the said goods without raising any objection and/or demur or protest either with regard to the quantity or the quality thereof and the invoices have been admitted, as shall appear from the confirmation statements.

5.4 It was agreed by and between the parties that the Corporate Debtor shall make payment in respect of the said goods within a period of 30 days from the date of invoice thereof. Consequent upon the supply of the said goods being effected upon the Corporate Debtor, the Operational Creditors raised 64 (Sixty four) number of invoices between the period 18.01.2016 to 08.05.2018 for a sum of Rs.5,79,58,608/-. Copies of the 64 invoices raised by the Operational Creditors are annexed to the petition and marked as Exhibit "C". It was further specified that interest will be charged @ 24%, if the invoice amount was not paid within the due date.

5.5 Over time, the Corporate Debtor started defaulting in payments. As such, the Corporate Debtor is liable to make payments to the Operational Creditors as shall appear from the confirmation statement which has been duly stamped and acknowledged by the Corporate Debtor. Subsequently, the Corporate Debtor has taken further goods from the Operational Creditors.

- 5.6 Upon expiry of 30 days from the invoice dates the Corporate Debtor failed and neglected to make payment of the sums due and payable. The total amount of unpaid debt is ₹5,79,58,608/- along with interest as on 28.02.2019 @ 24% per annum *i.e.* ₹2,95,63,777/- totaling to ₹8,75,22,385/- towards sale of the said goods.
- 5.7 In spite of repeated reminders to the Corporate Debtor on behalf of the Operational Creditors, no amount has been paid by the Corporate Debtor. In the aforesaid circumstances, a notice dated 19th December, 2018 and another notice dated 8th March, 2019 were issued under section 8 of the Insolvency and Bankruptcy Code, 2016 read with Rule 5 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016.
- 5.8 Copies of such letters dated 19th December, 2018 by the Operational Creditors and its reply by the Corporate Debtor on 1st January, 2019 are annexed to the petition and collectively marked as Exhibit "D".
- 5.9 Copies of letter dated 8th March, 2019 by the Operational Creditors along with its reply by the Corporate Debtor on 19th March, 2019 and the Operational Creditors' reply dated 1st April, 2019 to the letter dated 19th March, 2019 are annexed to the petition and collectively marked as Exhibit-"E".
- 5.10 In spite of the receipt of the demand notices, the Corporate Debtor neglected to make any payment. The operational debt of Rs.8,75,22,385/- is due and outstanding from the Corporate Debtor to the Operational Creditors.
- 5.11 The documents relied upon by the Operational Creditors in support his claims include:
- i. Master Data of the Corporate Debtor, being Exhibit A;

- ii. 64 invoices for the period 18.01.2016 to 8.05.2018;
- iii. Demand Notice dated 19th December 2018 along with its reply dated 1st January 2019, being Exhibit D;
- iv. Demand Notice dated 8th March 2019 along with its reply dated 19th March 2019 and Operational Creditors' reply dated 1st April 2019 to the said letter, being Exhibit E;
- v. Bank account statements of the Operational Creditors for the period 15.01.2016 to 31.03.2019, being Annexure II;

6. **Submissions on behalf of the Corporate Debtor:**

- 6.1 It is submitted that there is no debt which is or can be said to be due and/or payable by the Corporate Debtor to the Operational Creditors. The said application has no merit and deserves to be dismissed.
- 6.2 There are serious disputed issues pertaining to the transaction in question and the Corporate Debtor reserves its right to initiate appropriate civil proceeding against the Operational Creditors seeking appropriate reliefs. An adjudication on the alleged claim of the Operational Creditors and the counter claim which the Corporate Debtor has against the Operational Creditors would only be possible in a proceeding where evidence can be taken. The instant application, in view of the pre-existing disputes between the parties, cannot be entertained and is liable to be dismissed with costs.
- 6.3 In any event, the alleged claim of the Operational Creditors is barred by limitation and a time barred debt cannot form the subject matter of a proceeding initiated under the provisions of the Code.
- 6.4 The said application has not been filed in compliance of the provisions of the Code. The Operational Creditors are not entitled to any order in the said application and the application is liable to be dismissed. The

Operational Creditors have suppressed relevant documents which would establish the existence of dispute between the parties preceding the purported notice issued in Form 3 of the Code.

6.5 The alleged claim is on account of unpaid price of goods purportedly sold and delivered to the Corporate Debtor. There is no formal agreement between the parties recording the terms and conditions of supply. The Operational Creditors have however acted in breach of the agreed understanding between the parties and has approached this Tribunal with unclean hands.

6.6 It is a matter of record that the Corporate Debtor is in requirement of HR Coils, a raw material used for manufacturing MS ERW pipes by the Corporate Debtor. Sri Rajesh Kumar Bihani represented himself to be a partner of M/s. Gaurishankar Bihani as well as M/s. Ramesh Co. Sri Rajesh Bihani approached the Corporate Debtor for the purpose of selling materials from the said two firms which carried on business in partnership. Relying upon such representations and/or assurances and believing the same to be true, the Corporate Debtor purchased materials required by it for manufacturing pipes.

6.7 The supplies effected over the last few years did not match the required specification and the quality criteria. In fact, the Corporate Debtor had reported the said fact with regard to inferior quality of materials supplied to Sri Pankaj Sharma who represented himself to be associated with the Operational Creditors and the said two firms. A request was made to replace the defective goods with superior quality of materials in order to enable the Corporate Debtor to complete the process of manufacturing of pipes for effecting supplies thereof to its end customers. The inferior quality of goods and/or the defective supplies were informed to the said two firms by letter dated 2nd March, 2017 issued by the Corporate Debtor which was duly received by the said Sri Pankaj Sharma. The said Sri Pankaj Sharma also assured the Corporate Debtor that the defective material supplied by the said two

firms would be replaced after discussion with Sri Rajesh Bihani who was looking after the business of the said two firms. A copy of the letter dated 2nd March, 2017 is annexed to the reply affidavit and marked as Annexure "B".

6.8 By reason of the defective supplies made, the Corporate Debtor had in fact failed to meet its obligation towards its end customers. The Corporate Debtor failed to deliver manufactured pipes to its customers by reason of the quality dispute that had arisen in the raw materials supplied to the Corporate Debtor. In this regard, a meeting was also held on 8th March, 2018 when Sri Rajesh Bihani assured to compensate the Corporate Debtor for the losses suffered on account of defective supplies made after making an enquiry and/or reasonable assessment of the losses suffered by the Corporate Debtor. Further, the said Sri Rajesh Bihani agreed to return the part payments made in advance for the defective supply of goods.

6.9 In spite of the representations and assurances as aforesaid, the Operational Creditors particularly Sri Rajesh Bihani failed and neglected to replace the defective goods supplied. By passage of time, the quality of the goods supplied further deteriorated and the Corporate Debtor also had to incur storage charges for the purpose of storing the defective goods. The breach of trust on the part of the Operational Creditors resulted in financial loss suffered by the Corporate Debtor which is reasonably assessed at Rs. 10 crores. The aforesaid would be evident from a letter dated 2nd June, 2017 issued by the Corporate Debtor to the Operational Creditors and the said two firms which have been duly received, a copy whereof is annexed to the reply affidavit and marked as Annexure "C".

6.10 By another letter dated 20th June, 2018 addressed to the Operational Creditors and the said two firms, the disputes that had arisen on account of defective supplies were once again highlighted. It was informed by the

Corporate Debtor that in spite of the accounts team of the Corporate Debtor, owing to inadvertence, had confirmed the alleged outstanding bills as per a ledger statement prepared by the Operational Creditors. It was also made clear that no money on account of defective goods was payable to the Operational Creditors who were called upon to indemnify the Corporate Debtor for the losses suffered by it on account of defective goods supplied. A copy of the letter dated 20th June, 2018 is annexed to the reply affidavit and marked as Annexure “D”.

- 6.11 From the corresponding exchange between the parties referred to in the present affidavit as well as the replies issued by the Corporate Debtor to the Form 3 notices, it is evident that there are serious disputes that pre-exist between the parties. The Operational Creditors, in spite of repeated representations, have not replaced the defective goods and has made an alleged claim on the basis of a purported ledger statement. No money is due or payable by the Corporate Debtor to the Operational Creditors in view of the disputes between the parties.
- 6.12 The Operational Creditors have purported to file the instant petition suppressing the aforesaid facts, knowing fully well that serious disputes as to the claim of the Operational Creditors and the same is sufficient to warrant rejection of the said application.
- 6.13 The Operational Creditors have filed another application under section 9 of the Code being CP (IB) No. 824/KB/2019 for a purported claim of ₹64,69,117/- arising out of the same transaction as referred to in the said application. The disputes in the instant petition and CP(IB) 824/KB/2019 are the same. A copy of the reply- affidavit filed by the Corporate Debtor in the said proceeding is annexed to the instant reply affidavit and marked as Annexure “E”.

7 **Rejoinder on behalf of the Operational Creditors:**

7.1 It is denied that there is no debt which is or can be said to be due or payable by the Corporate Debtor to the Operational Creditors as alleged or at all.

7.2 It is denied that any evidence is required to be led for the purpose of adjudication of the debt of the operational debt as alleged or at all. The debt is admitted by the Corporate Debtor.

7.3 It is stated that the Corporate Debtor at no material point of time has either disputed and/or sought to raise any dispute pertaining to the claims of the Operational Creditors. It is further stated that the Corporate Debtor had not raised any dispute before the notice under Section 8 of the Insolvency and Bankruptcy Code. All attempts by the Corporate Debtor to raise dispute pertaining to the outstanding sum is only an attempt to wriggle out of its obligation to make payment of the dues of the Operational Creditors.

7.4 It is denied that there is any counter claim of the Corporate Debtor as against the Operational Creditors in relation to the transaction which is the subject matter of the present petition as alleged or at all. It is denied that the purported claim of the Corporate Debtor can form the basis of a purported legal or purported equitable set off or that the claim of the Operational Creditors can never exist as alleged or at all.

7.5 There is no requirement for a format agreement between the parties recording the terms and conditions of supply. There cannot be any dispute with regard to the supply of the goods as the same had not been raised contemporaneously by the Corporate Debt or prior to filing of the instant affidavit as reply to the petition filed by the Operational Creditors.

7.6 It is denied that the supplies effected by the Operational Creditors to the Corporate Debtor did not match the required specification or quality criteria. or that the Corporate Debtor had reported the same to one Mr. Pankaj Sharma. It is further denied that any request was made to replace the goods supplied by the Operational Creditors.

7.7 It is denied that the Corporate Debtor had raised any dispute regarding the quality of goods or that inferior quality of goods or defective supplies were informed to the firm by the purported letters dated 2nd March 2017, 2nd June 2017 and 20th June 2018 issued by the Corporate Debtor or that such letters were received by Pankaj Sharma. The said letters were never received by the Operational Creditors or Mr. Pankaj Sharma. The Corporate Debtor has brought the same into existence for the purpose of creating an illusion of pre-existing dispute between the parties. The stamp appearing on the said letters are also not that of the Operational Creditors as well as the signature of Mr. Pankaj Sharma, one of the employees of the Operational Creditors, has also been forged and the said letter was never received by him.

7.8 It is further denied that there was any meeting between the Corporate Debtor or the said Rajesh Kumar Bihani on 8th March, 2018 wherein the said Rajesh Kumar Bihani purportedly assured to compensate the Corporate Debtor for the purported loss suffered on account of the purported defective supplies made.

8 **Supplementary Affidavit dated 12th December, 2019 on behalf of Corporate Debtor:**

8.1 The instant supplementary affidavit has been filed to bring on record certain additional documents for adjudication of the present disputes.

8.2 It is submitted herein that Operational Creditors have also filed a civil suit before the Hon'ble High Court at Calcutta against the Corporate Debtor

abovenamed being Civil Suit no. 254 of 2019 for the recovery of the price of goods as well as interlocutory application being G.A. No.2598 of 2019 seeking a judgment and decree for admission for a sum of Rs.5,79,58,608/-.The said application was heard by the Hon'ble Court on 29 November 2019 when upon hearing the contentious of the parties the Hon'ble Judge refused to grant any relief for injunction and subsequently passed directions for filing Affidavit-in-Opposition by the Corporate Debtor.

8.3 The Operational Creditors in their Interlocutory application filed before the Hon'ble High Court at Calcutta failed to disclose the fact that the present Insolvency proceedings have been filed as against the Corporate Debtor. The Corporate Debtor has duly prepared the affidavit in opposition and also effected the service of the same on the Operational Creditors and accordingly the matter is likely to be heard by the Hon'ble High Court at Calcutta in due course.

8.4 In view of the fact that the Operational Creditors have already filed a comprehensive civil suit seeking recovery of the dues, it would be manifestly clear that the objections raised by the Corporate Debtor in the present proceedings depict the fact that there are genuine pre-existing disputes and the present proceedings should be dismissed on this ground itself.

8.5 In the above facts and circumstances the said application is *mala fide*, made by gross suppression of material facts and without any merit and is liable to be dismissed with exemplary costs.

9 **Reply to the Supplementary Affidavit filed on behalf of the Corporate Debtor:**

9.1 It is denied that the interlocutory application filed before the Hon'ble High Court at Calcutta failed to disclose that the present insolvency

proceedings have been filed as against the Corporate Debtor as alleged or at all. The contents of the affidavit in opposition filed by the Corporate Debtor before the Hon'ble High Court at Calcutta are denied. It is denied that there are any pre-existing disputes far apart from any dispute that have been raised by the Corporate Debtor before this Tribunal are genuine as alleged or at all. It is denied that the present proceedings should be dismissed on this ground as alleged or at all. It is denied that the application is *mala fide* or made by suppression of any fact or without any merit or that it is liable to be dismissed as alleged or at all.

9.2 A perusal of the last balance sheet of the Corporate Debtor which has been downloaded from the website of the ministry of corporate affairs reveals that the Corporate Debtor is in impecunious condition. The Corporate Debtors have suffered a loss to the tune of Rs 6,59,04,686/-. Also, all manufacturing activities of the Corporate Debtor has stopped and the factory of the Corporate Debtor is lying closed.

9.3 The purported defense of the Corporate Debtor is sham as for all goods supplied by the Operational Creditors to the Corporate Debtor the same is accompanied by test certificates issued by the manufacturer. Some of such test certificates are annexed to this reply and collectively marked with the letter-"A". Hence the plea of poor quality of goods is absolutely false and untrue.

9.4 The Operational Creditors have deposited VAT collected form the Corporate Debtors with the taxing authorities. The Corporate Debtors have also taken full input credit of such VAT paid to the Operational Creditors and adjusted against the VAT collected from the Corporate Debtor's buyers. There is no VAT mis-match. The same is evident from the VAT returns website maintained by the Directorate of Commercial

Taxes, Department of Finance, Government of West Bengal a copy whereof is annexed to this reply and marked with the letter-"B".

9.5 On a comparison of the total sales figure in the books of accounts maintained with the Operational Creditors and acknowledgment issued by the taxing authorities it is evident that the total sales have been correctly reflected and corresponding VAT has been deposited by the Operational Creditors of which the Corporate Debtor has taken credit. Hence there is no mismatch that is reflected in the records maintained by the taxing authorities. The aforesaid facts would be reflected from the returns filed by the Corporate Debtor with the taxing authority, the copies whereof are annexed to this reply and collectively marked with the letter-"D".

9.6 The Corporate Debtor has alleged that letters purportedly issued by the Corporate Debtor raising disputes allegedly prior to institution of the present proceedings were received by one Mr. Pankaj Sharma for and on behalf of the Operational Creditors. A purported seal which is forged and fabricated of the company appears on such letters as well. The said Mr. Pankaj Sharma has affirmed an affidavit denying the same. A copy of the said affidavit is annexed to this reply and marked with the letter-"E".

10 **Supplementary Affidavit dated 4th May, 2022 on behalf of Operational Creditor:**

10.1 It is submitted that on 01.04.2022, this Tribunal granted leave to the Operational Creditors to bring on record certain orders and/or documents before this Tribunal, the disclosure of which would have a bearing on the outcome of this instant proceeding.

- 10.2 The parties to the instant proceedings are also parties to a suit filed by the Operational Creditors against the Corporate Debtor before the Hon'ble High Court at Calcutta being C.S. No. 254 of 2019, for recovery of price of goods sold and delivered. In the said suit, the Operational Creditors and/or petitioner also filed an application being G.A. No.2598 of 2019 seeking a judgment and decree for admission for a sum of Rs.5,79,58,608/-.
- 10.3 The said suit was decreed in favour of the plaintiffs and/or the Operational Creditors by a judgment dated 16th January, 2020 for a sum of Rs.5,79,58,608/-. Thereafter, the Corporate Debtor as the appellant preferred an appeal before the Hon'ble Division Bench. The same was dismissed as withdrawn by an order dated 1st July, 2020.
- 10.4 The Corporate Debtor, however in the meantime filed an application for review of the judgment and decree dated 16th January, 2020 on the ground that the Learned Master did not have the power to grant leave under Section 12A of the Commercial Courts Act, 2015. The Learned Single judge while dismissing the Application for Review observed that the defendant (being the Corporate Debtor herein) did not raise the issue of leave under Section 12A of Act of 2015 being granted by the Ld. Master.
- 10.5 The Corporate Debtor filed a Special Leave Petition challenging the decree dated 16th January, 2021, passed in G.A. No.2598 of 2019 in C.S. No. 254 of 2019 and judgment dated 11th February, 2021 in RVW 6 of 2020. The same was however dismissed as withdrawn by an order dated 16th July, 2021.
- 10.6 The Corporate Debtor filed two parallel appellate proceedings before the Hon'ble High Court at Calcutta including an appeal from the Learned Master's order under Chapter VI, Rule 15 of The Rules of The

High Court At Calcutta (Original Side), 1914 and an appeal from the judgment and decree dated 16th January, 2020. The appeal from the Learned Master's order at such a belated stage was dismissed by the Learned Single Judge by an order dated 07.04.2022.

10.7 The appellate proceedings are however pending before the Hon'ble Division Bench. The Hon'ble Division Bench has however observed that the plaintiffs/decree holders/ Operational Creditors are at liberty take steps in accordance with law.

10.8 The Operational Creditors /decree holders have filed execution proceedings before the Learned Single Judge taking up interlocutory matters. The Corporate Debtor has been restrained by an order of injunction to deal with their assets.

11. Analysis and Findings:

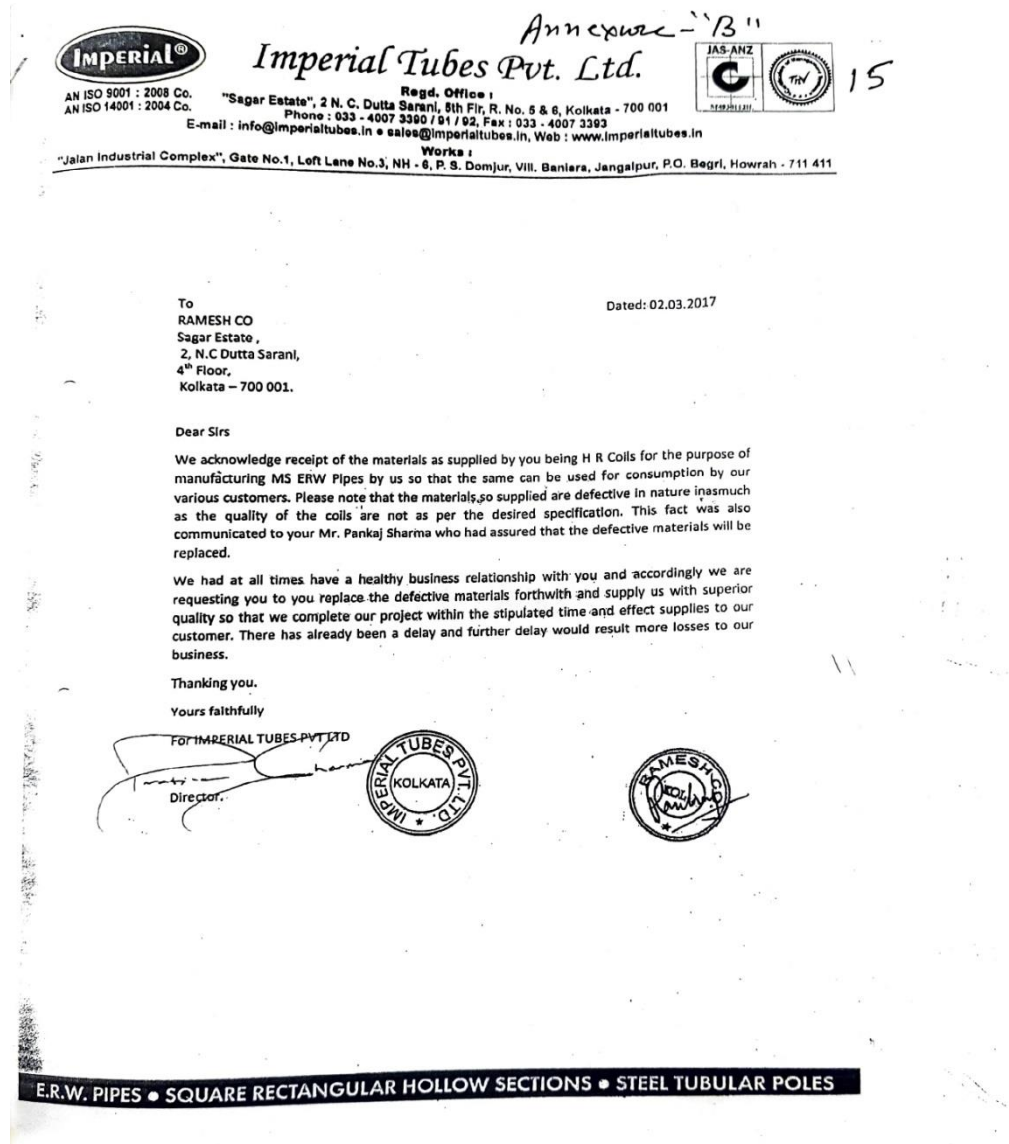
11.1 We have heard the Ld. Counsel on behalf of the Operational Creditors and the Ld. Counsel on behalf of the Corporate Debtor and perused the records.

11.2 The primary defence of the Corporate Debtor is that the instant matter involves pre-existing disputes. The Corporate Debtor has produced on records letters dated 2nd March 2017, 2nd June 2017 and 20.06.2018 which clearly show that the Corporate Debtor had raised the said issues regarding the quality of goods supplied much prior to the issuance of the demand notice dated 19th December 2018 by the Operational Creditors. The Corporate Debtor has also notified the Operational Creditors of the pre-existing disputes vis a vis the abovementioned letters in his reply dated 1st January 2019 to the said Demand. In the reply to the second demand notice dated 8th March 2019, the Corporate Debtor has referred to its earlier reply being reply dated 1st January 2019, which mentions such disputes.

In the National Company Law Tribunal,
Kolkata Bench (Court- II)

Ramesh Co. vs. Imperial Tubes Pvt. Ltd.
C.P (IB) 848/KB/2019

The letter dated 2.03.2017, being the first letter of dispute is extracted and reproduced hereinunder:



11.3 In regard to issue of pre- existing disputes, we would like to refer to the decision of the Hon'ble Supreme Court in the matter of *Mobilox Innovations*

Private Limited Vs. Kirusa Software Private Limited¹ wherein it was held that:

“The scheme of Section 7 stands in contrast with the scheme Under Section 8 where an operational creditor is, on the occurrence of a default, to first deliver a demand notice of the unpaid debt to the operational debtor in the manner provided in Section 8(1) of the Code. Under Section 8(2), the corporate debtor can, within a period of 10 days of receipt of the demand notice or copy of the invoice mentioned in Sub-section (1), bring to the notice of the operational creditor the existence of a dispute or the record of the pendency of a suit or arbitration proceedings, which is preexisting - i.e. before such notice or invoice was received by the corporate debtor. The moment there is existence of such a dispute, the operational creditor gets out of the clutches of the Code.”
(Para 29)

The Apex Court, in ***Mobilox Innovations Private Limited (Supra)*** further held that:

“...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.” (Para 40)

¹ Mobilox Innovations Private Limited vs. Kirusa Software Private Limited (21.09.2017 - SC) : MANU/SC/1196/2017

- 11.4 In the instant matter, not only has the Corporate Debtor established that there were pre-existing disputes and that the Operational Creditors had notice of such disputes, but also, the chain of emails between the parties concerned as produced between pages 551 to 563 of the petition indicates that there was no consensus between the parties regarding the quantum of the debt owed to the Operational Creditors and the losses suffered by the Corporate Debtor on account of poor quality of supplies and multiple attempts were made to resolve the said issues. The correspondence between the parties along with the three letters issued by the Corporate Debtor further indicate that the said disputes were not mere feeble legal arguments or assertions of fact unsupported by evidence.
- 11.5 It is noted that the Operational Creditors in its pleadings have challenged the receipt of the letters dated 2nd March 2017, 2nd June 2017 and 20.06.2018 and disputed the genuineness of the Operational Creditors' stamp and signature therein. However, the question of the genuineness of the said signature and stamp can only be adjudicated upon in an evidentiary proceeding and not by a summary proceeding under the Code.
- 11.6 Further, the Operational Creditors, in order to recover its dues from the Corporate Debtor, has already filed a civil suit and thereafter execution proceedings for the decree awarded therein.
- 11.7 In the light of the above-mentioned circumstances, the law laid down by the Hon'ble Supreme Court and keeping in mind the purpose of the Code, this Adjudicating Authority is satisfied that the instant petition is liable to be **rejected**.
- 11.8 Consequently, **C.P.(IB) No. 848/KB/2019** shall stand **dismissed**. Needless to say, the Operational Creditor is free to pursue its remedies under any other law, and the dismissal of the present petition shall not stand in the way of such pursuit of remedies.

- 11.9 The registry is directed to send e-mail copies of the order forthwith to all the parties and their Ld. Counsel for information and for taking necessary steps.
- 11.10 Certified Copy of this order may be issues, if applied for, upon compliance of all requisite formalities.

Balraj Joshi

Member (Technical)

Rohit Kapoor

Member (Judicial)

Signed on this, the 1st day of September, 2022

SM[LRA]