

**FREE OF COST COPY**

**IN THE NATIONAL COMPANY LAW TRIBUNAL**  
**AMARAVATI BENCH**  
**(Through Hybrid Mode)**

**Item No.1**

**IA(IBC)/164/2024, IA(IBC)/168/2023 in**  
**RCP (IBC)/13/9/AMR/2024 (Old Case No.CP(IB)/116/9/AMR/2022)**

**IN THE MATTER OF:**

**Haldia Petrochemicals Limited** --- **Petitioner/Operational Creditor**  
**Vs**  
**VR Commodities Private Limited** --- **Respondent/Corporate Debtor**

**Under Section: 9 of IBC, 2016**  
**Rules: 11 of NCLT Rules, 2016**

**Order delivered on 25.08.2025**

**CORAM:**

**SHRI UMESH KUMAR SHUKLA**  
**HON'BLE MEMBER (TECHNICAL)**

**SHRI KISHORE VEMULAPALLI**  
**HON'BLE MEMBER (JUDICIAL)**

**PRESENT:**

**In CP**

For the Petitioner / Operational Creditor : Mr. Mainak Bose, Sr. Adv.  
For the Respondent / Corporate Debtor : Mr. Y. Suryanarayana, Adv.

**In IAs**

For the Applicant in  
IA(IBC)/164/2024, IA(IBC)/168/2023 : Mr. Y. Suryanarayana, Adv.  
For the Respondent in  
IA(IBC)/164/2024, IA(IBC)/168/2023 : Mr. Mainak Bose, Sr. Adv.

**ORDER**

**IA (IBC)/164/2024, IA (IBC)/168/2023:**

Order pronounced and recorded vide separate sheets. The Applications bearing **IA (IBC)/164/2024** and **IA (IBC)/168/2023** filed by the Applicant/CD are **allowed and disposed of.**

**RCP (IBC)/13/9/AMR/2024:**

Order pronounced and recorded vide separate sheets. The Company Petition bearing **RCP (IBC)/13/9/AMR/2024** filed by the Operational Creditor is **admitted and the IRP is appointed.**

**Sd/-**

**(UMESH KUMAR SHUKLA)**  
**MEMBER (TECHNICAL)**

**Sd/-**

**(KISHORE VEMULAPALLI)**  
**MEMBER (JUDICIAL)**

**IN THE NATIONAL COMPANY LAW TRIBUNAL  
AMARAVATI BENCH AT MANGALAGIRI**

*(Exercising powers of Adjudicating Authority under  
the Insolvency and Bankruptcy Code, 2016)*

**IA (IBC)/168/2023 & IA (IBC)/164/2024 in RCP (IB)/13/9/AMR/2024**  
**AND**  
**RCP (IB)/13/9/AMR/2024**

**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**

**IN THE MATTER OF:**

**Haldia Petrochemicals Limited**

Having its registered office at  
Tower 1, Bengal Eco Intelligent Park (Techna),  
Block-EM, Plot No 3, Sector-V, Salt Lake,  
Kolkata-700091

.... Operational Creditor

Versus

**VR Commodities Private Limited**

(CIN: U52100AP2019PTC113509)

Having its registered office at  
9-30-4, Balaji Nagar, Siripuram,  
Vishakhapatnam, Andhra Pradesh-530003.

.... Corporate Debtor

**IN THE MATTER OF INTERLOCUTORY APPLICATION NO. IA (IBC)/168/2023  
AND IA (IBC)/164/2024 in RCP (IB)/13/9/AMR/2024:**

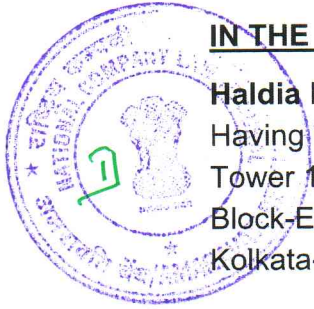
**Under Rule 11 of the National  
Company Law Tribunal Rules, 2016**

**VR Commodities Private Limited**

Having its registered office at  
9-30-4, Balaji Nagar, Siripuram,  
Vishakhapatnam, Andhra Pradesh-530003

.... Corporate Debtor

Versus



**Haldia Petrochemicals Limited,**  
Having its registered office at  
Tower 1, Bengal Eco Intelligent Park (Techna),  
Block-EM, Plot No 3, Sector-V, Salt Lake,  
Kolkata-700091.

.... Operational Creditor

**Order delivered on:25.08.2025**

**Coram: HON'BLE Mr. KISHORE VEMULAPALLI, MEMBER (JUDICIAL)**  
**HON'BLE Mr. UMESH KUMAR SHUKLA, MEMBER (TECHNICAL)**

**Present:**

For the Operational Creditor : Mr. Mainak Bose, Sr counsel  
For the Corporate Debtor : Mr. Y. Suryanarayana, Advocate.

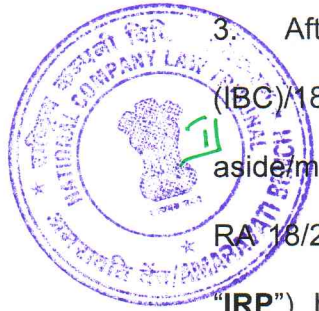
**ORDER**  
**PER: BENCH**

The Operational Creditor filed the Company Petition bearing No. CP(IB)/116/AMR/2022 on 01.11.2022 vide Dairy No.1083 (hereinafter referred to as the "CP 116/2022") under section 9 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as the "IBC"/ "Code") read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 (hereinafter referred to as the "IB Rules") by Haldia Petrochemicals Limited. (hereinafter referred to as the "Operational Creditor") with a prayer to initiate **Corporate Insolvency Resolution Process** (hereinafter referred to as the "CIRP") against **VR Commodities Private Limited** (hereinafter referred to as the "Corporate Debtor") and the Corporate Debtor under Rule 11 of the NCLT Rules, 2016 filed IA(IBC)/168/2023 (hereinafter referred to as the IA 168/2023) on 13.04.2023 vide Diary No.2049 and IA(IBC)/164/2024 (hereinafter referred to as the IA 164/2024) vide

Diary No.610 on 01.05.2024 seeking additional time to place on record certain additional facts and documents.

2. Later, this Adjudicating Authority vide its order dated 01.07.2024 noted that the Corporate Debtor has already taken into CIRP by virtue of this Adjudicating Authority order in CP (IB)/22/7/AMR/2023 (hereinafter referred to as the "**CP 22/2023**") and therefore disposed of the CP 116/2022 along IA 168/2023 and IA 164/2024 with the liberty to file a fresh Petition in case any settlement arrived between the parties.

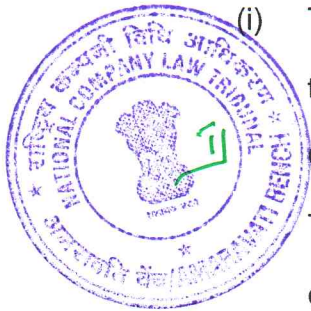
3. Afterwards, the Operational Creditor filed the Restoration Application (IB)/18/2024 (hereinafter referred to as the "**RA 18/2024**") seeking to recall/set aside/modify the order dated 01.07.2024 passed in CP 116/2022. It was stated in the RA 18/2024 that the Interim Resolution Professional (hereinafter referred to as the "**IRP**") has intimated the Operational Creditor that on the Application bearing IA(IBC)/270/2024 ("**IA 270/2024**") has been filed on 20.07.2024 for withdrawal of CP 22/2023 with the consent of all the Financial Creditors and this Adjudicating Authority vide its order dated 29.07.2024 granted permission for withdrawal of the CIRP of the Corporate Debtor subject to the cost of Rs.1,00,000/- to be deposited in *Bharatkosh* within one month. In compliance of the above order, the Counsel for the Financial Creditor sent the Compliance Memo in IA 270/2024 to the Registry vide its email dated 21.08.2024 that the cost of Rs.1,00,000/- has been deposited in Bharatkosh on 02.08.2024 vide Transaction Ref. No.0208240035010. Thereafter, this Adjudicating Authority vide its order dated 13.11.2024 allowed the RA 18/2024 and CP116/2022 was restored and renumbered by the Registry as RCP (IB)/13/9/AMR/2024 (hereinafter referred to as the "**RCP 13/2024**").



4. The Corporate Debtor is a Company incorporated on 26.11.2019 under the provisions of Companies Act, 2013 with its registered office at 9-30-4, Balaji Nagar, Siripuram, Vishakhapatnam, Andhra Pradesh-530003. Hence, the territorial jurisdiction lies with this Adjudicating Authority.

**FACTS OF THE CASE:**

5. Brief facts of the case, as stated by the Operational Creditor in the Petition, are summarised below:



- (i) The debt had arisen out of the Purchase Order (hereinafter referred to as the "PO") dated 20.04.2022 bearing PO number 3052401 raised by the Operational Creditor upon the Corporate Debtor for supply of 25000 Metric Tonnes (hereinafter referred to as the "MT") of coal for a total ordered value of Rs.20,13,09,500/-.
- (ii) In terms of the delivery schedule mentioned in Clause 5 of the PO, the Corporate Debtor was to deliver the entire consignment by 04.05.2022 and as per the payment terms stipulated in Clause 4 of the PO, the Operational Creditor was to effect payment to the tune of 30% of the basic value, as advance against submission of proforma invoice along with the PO.
- (iii) The aforesaid PO was raised by the Operational Creditor on 20.04.2022 and accepted by the Corporate Debtor on the same day. The Corporate Debtor raised an advance invoice dated 20.04.2022 on the Operational Creditor towards 30% advance for a sum of Rs.7,01,62,500/-. As the amount raised in above advance invoice was in excess of 30% of the PO amount, the Operational Creditor proceeded to make payment of Rs.6,03,92,850/- being 30% of the basic value of the total order value of

Rs.20,13,09,500/- and after deducting TDS in terms of Section 194Q of the Income Tax Act, 1961, a sum of Rs 603,37,457.15/- was paid on 22.04.2022 vide UTR NO. SBINI22112857494.

- (iv) The Corporate Debtor accepted the aforesaid advance sum and assured to deliver the consignment in terms of the aforesaid PO, but has failed to comply the terms and conditions pertaining to the PO and till date has not supplied any quantity of coal.
- (v) In reply to the Operational Creditor's letters dated 30.05.2022 and 10.06.2022 to refund the aforesaid advance sum of money, the Corporate Debtor vide an email dated 15.06.2022, assured the Operational Creditor that all the pending consignments shall be delivered, but neither delivered any consignment nor refunded the aforesaid advance sum of money. As on date, a sum of Rs.6,03,37,457.15/- as operational debt is due and payable by the Corporate Debtor to the Operational Creditor.
- (vi) The Operational Creditor in the prescribed form issued a demand notice under section 8 of the IBC, both by e-mail and by registered speed post, demanding from the Corporate Debtor an amount of operational debt to the tune of Rs.603,37,457.15.
- (vii) Despite receipt of the demand notice, the Operational Creditor has not received any part or portion of the operational debt demanded by the above demand notice from the Corporate Debtor. On or about 05.08.2022, the Corporate Debtor vide an email, requested the Operational Creditor to not initiate any action and stated that the supply of the goods should be completed by August 2022. However, all such assurances were made in vain.



(viii) As per Part IV of Form 5, the amount claimed to be in default and the date of default is as below:

<p>2. AMOUNT CLAIMED TO BE IN DEFAULT AND THE DATE ON WHICH THE DEFAULT OCCURRED (ATTACH THE WORKINGS COMPUTATION OF AMOUNT AND DATES OF DEFAULT IN TABULAR FORM)</p>	<p>As on date, an operational debt for a sum of Rs. 603,37,457.15/- (Six Crore Three Lakh Thirty-Seven Thousand Four Hundred and Fifty-Seven Rupees and Fifteen Paise Only) has become due and the Corporate Debtor has defaulted in making such payment.</p> <p>The Date of Default is 20 June 2022, which is on the expiry of 10 days from the date of receipt of the demand notice dated 10 June 2022.</p> <p>The Worksheet summarizing operational debt/computation of default is annexed and marked "Annexure-H".</p>
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**COUNTER OF THE CORPORATE DEBTOR:**

6. In response to the receipt of notice of the Petition, the Corporate Debtor filed its reply vide Diary No.1807 dated 24.02.2023 and *inter alia* contended as under:

- (i) The Petition is baseless, factually and legally incorrect, and should be dismissed at the outset. The Operational Creditor has withheld material information and has filed the Petition, for ulterior purpose of arm twisting the Corporate Debtor and not for the resolution of the Corporate Debtor. The Application fails to comply with the mandatory requirements of the Code, which are prerequisite for filing of any Petition under the Code.
- (ii) The Corporate Debtor is engaged in the import and trading of coal in India and maintains a solvent position with good financial standing and assets. The Operational Creditor is one of several customers and has been engaged in business with the Corporate Debtor since February, 2022. Pursuant to an Agreement dated 14.02.2022, subsequently amended by an Amendment Agreement (copy annexed as Annexure R-2 to the

Counter), the Corporate Debtor agreed to supply non-coking, and thermal/ steam coal of Indonesian origin (in bulk) to the Operational Creditor. Under this arrangement, the Operational Creditor issued two POs between February 2022 and April 2022. The details of the purchase orders issued by the Operational Creditor on the Corporate Debtor are as under:

S.N.	Date	PO No.	Quantities	Purchase Amount
1.	22.02.2022	3052095 (1 <sup>st</sup> PO)	25,000 MT @ Rs.7600/ MT	Rs.19 crore (excluding handling and cess)
2.	20.04.2022	3052401 (2 <sup>nd</sup> PO)	25,000 MT @ Rs.9355/ MT	Rs.20.13 crore (excluding GST, handling charges and cess)



All POs raised by the Operational Creditor were governed by the Agreement dated 14.02.2022, as subsequently amended and each PO contained specific terms relating to quantity, quality, payment, and delivery of coal; however, the Agreement and the Amendment Agreement allowed for mutual adjustments between POs, where necessary.

- (iv) As per Clause 11 of the 1<sup>st</sup> PO, the Operational Creditor was obligated to establish an irrevocable Letter of Credit at sight (hereinafter referred to as the "LC") for 80% of the net invoice value, allowing for 10% variance in quantity and quality, through a primary bank within two days of accepting the PO. Further, Clause 2.4 of the 1<sup>st</sup> PO made the shipment of coal by the Corporate Debtor conditional on the Operational Creditor's compliance with Clause 11 of the 1<sup>st</sup> PO. Contrary to the agreed terms, the Operational Creditor failed to establish the LC as required under Clause 11 of the 1<sup>st</sup> PO.
- (v) Despite the non-compliance, the Corporate Debtor, in utmost good faith, shipped the coal under the 1<sup>st</sup> PO on 06.03.2022 for a value of approximately Rs.22.6 crores, however, no LC was issued, and the

Operational Creditor failed to adhere to the stipulated timelines under both the 1<sup>st</sup> PO and the Agreement dated 14.02.2022. Clause 11.2 of the Agreement dated 14.02.2022 specifically makes timely opening of a clean LC as an essential condition and under Clause 11.3 of the Agreement, such delay entitled the Corporate Debtor to revise the shipment schedule.

(vi) After the shipment under the 1<sup>st</sup> PO, the Corporate Debtor made additional ad hoc supplies to the Operational Creditor based on separate individual requests. Despite prior delays and non-compliance by the Operational Creditor, the Corporate Debtor in utmost good faith and to maintain business relations with the Operational Creditor, fulfilled these supply obligations and raised corresponding invoices.

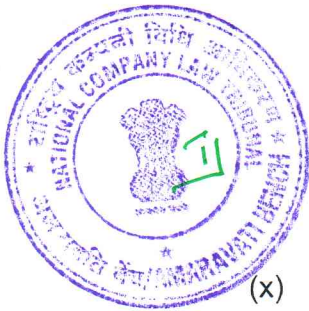


(vii) Accordingly, an invoice for Rs.32,47,26,630/- was raised by the Corporate Debtor under the 1<sup>st</sup> PO, as they were outstanding. Even after supply of goods under the 1<sup>st</sup> PO and additional supplies vide separate individual invoices by the Corporate Debtor, the Operational Creditor failed to pay the outstanding amounts. Further, as per the Corporate Debtor's ledger, by 22.04.2022, invoices totalling Rs.77,49,05,975.11 had been issued to the Operational Creditor, against which the Operational Creditor made payments amounting to only Rs.62,12,64,612.17. Consequently, a total sum of Rs.15,36,41,362 remained outstanding as of April 2022, for supplies made under both the 1<sup>st</sup> PO and the individual supplies.

(viii) While an outstanding amount of Rs.15,36,41,362 remained unpaid against earlier invoices, the Operational Creditor, under the 2<sup>nd</sup> PO dated 20.04.2022, was required to pay 30% of the basic value as advance and further establish an irrevocable LC at sight for 50% of the net invoice value.

On 22.04.2022, the Operational Creditor paid Rs.6,03,92,850. However, due to the prior outstanding dues and the Operational Creditor's history of delayed payments, the Corporate Debtor did not make upfront delivery of the goods and requested clearance of pending amounts. As per the Agreement dated 14.02.2022, the Corporate Debtor was entitled to revise shipment schedules in such circumstances.

- (ix) Subsequently, the Operational Creditor requested cancellation of the 1<sup>st</sup> PO. Acting on these instructions, the Corporate Debtor cancelled the rakes booked for the 1<sup>st</sup> PO and was compelled to issue a credit note to the Operational Creditor. From the above, it is evident that there was, in fact, no amount due and payable by the Corporate Debtor.



- (x) The Application is liable to be rejected on grounds of non-compliance with Rule 5(2) (a) of the Adjudicating Authority Rules, 2016. The Operational Creditor failed to properly serve the mandatory demand notice in Form 3 or Form 4, as required under the said Rule. The demand notice must be delivered to the Corporate Debtor's registered address by hand, registered/speed post with acknowledgment, or via email to the whole-time director or designated partner or key managerial person, if any. However, the Track consignment report (RW466238600IN), submitted by the Operational Creditor, indicates the notice was only marked as "Out for Delivery" and "not Delivered." Therefore, the demand notice was never actually served at the Corporate Debtor's registered address. Non-service of the demand notice renders the notice invalid in law. Consequently, the Application under Section 9 of the Code, filed on the basis of said notice is liable to be rejected.

(xi) This Adjudicating Authority should not entertain the Petition, as it suffers from mala fide suppression and concealment of facts crucial to its adjudication. Suppression of material facts disentitles a party from relief. In the present case, the Operational Creditor has failed to disclose key facts concerning the pre-dispute transactions and the balances due under the 1<sup>st</sup> PO and subsequent individual supplies. The nature of the agreement and balances due from 1<sup>st</sup> PO & the additional individual supplies, are very essential in determining, if the Corporate Debtor has defaulted on its obligations, or on the contrary, it is the Operational Creditor, who has always been in default.



(xii) The Operational Creditor has selectively presented events, omitting details of its own non-performance, especially the failure to open an LC under the Agreement dated 14.02.2022, and delays in making payments as per the POs. It is only due to these delays that the Corporate Debtor adjusted the claimed amount against pre-existing dues. As of 22.04.2022, an additional amount still remains payable by the Operational Creditor to the Corporate Debtor. The Operational Creditor's deliberate omission of these facts, including the failure to annex the Agreement dated 14.02.2022 itself, is an attempt to mislead this Hon'ble Tribunal and avoid a potential dismissal. The transactional history and payment defaults on the Operational Creditor's part are central to determining, whether any default exists on the part of the Corporate Debtor. In view of this suppression/ distorted material facts, the Petition is liable to be rejected.

(xiii) Section 9 permits initiation of the CIRP by an Operational Creditor only where there is an undisputed operational debt due and payable by the

Corporate Debtor, which remains unpaid. In the present case, there exists no debt which is due and payable, and there is a pre-existing dispute.

(xiv) The Operational Creditor claims that an amount of Rs.6,03,37,457.15 was due from the Corporate Debtor as on 22.04.2022. However, on the contrary, it is the Operational Creditor, who is liable to pay outstanding amounts to the Corporate Debtor as against the procurement of goods.

(xv) Without prejudice to the above, the Corporate Debtor has consistently disputed the Operational Creditor's claims. A clear notice of dispute had been communicated, and the ledger maintained by the Corporate Debtor, which is known to the Operational Creditor, clearly reflects that the Operational Creditor is the defaulting party. In view of the valid pre-existing dispute between the parties at the time of filing, and as per Section 9(5)(ii)(d) of the Code, the Petition needs to be rejected.



(xvi) The present Petition has been filed solely to pressurize the Corporate Debtor into making payments against non-existent debts. The Operational Creditor has filed the Petition without any cogent reason, which lacks proof of existence of any default on the part of the Corporate Debtor. It is only when the Corporate Debtor declined to honour unjustified claims and adjusted amounts against pre-existing dues, the Operational Creditor resorted to filing this Petition as a coercive measure. Thus, the present Petition preferred by the Operational Creditor is only an attempt to recover the alleged dues and should be rejected in *limine*.

(xvii) The Preamble of the Code emphasizes "reorganisation" and "insolvency resolution" and specifically omitting the term "recovery." The Hon'ble Supreme Court in **Mobilox Innovations Pvt. Ltd. v. Kirusa Software Pvt.**

*Ltd.*, (2018) 1 SCC 353, clarified that the Code is not a substitute for debt enforcement mechanisms. Further, in *Agarwal Veneers v. Fundtonic Services Pvt. Ltd.*, MANU/NL/0521/2022 and *Binani Industries Ltd. v. Bank of Baroda, Company Appeal (AT) (Insolvency) No. 82 of 2018*, it was reaffirmed that where the Corporate Debtor is solvent and a going concern, insolvency proceedings cannot be misused for recovery. 'Recovery' dispossesses the Corporate Debtor of its assets while a Resolution is an effort to keep it afloat. In line with *K. Kishan v. Vijay Nirman Co. Pvt. Ltd.*, (2018) 17 SCC 662 and *Praveen Kumar Mundra v. CIL Securities Ltd.*, NCLAT 334, where proceedings are initiated for any fraudulent purpose other than resolution, they are liable to be dismissed.



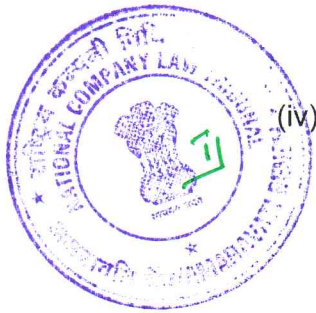
(xviii) As the Application constitutes a clear abuse of the process of law and has been initiated with a fraudulent and malicious intent to harass the Corporate Debtor, it may be dismissed with exemplary costs and penalty may be imposed under Section 65(1) of the Code.

#### **REJOINDER BY THE OPERATIONAL CREDITOR:**

7. The Operational Creditor in its rejoinder filed *vide* Dairy No. 2010 dated 03.04.2023 denied all the contentions raised by the Corporate Debtor and stated that:

- (i) The Corporate Debtor alleged that subsequent to the Agreement dated 14.02.2022, another Amendment Agreement was also executed, which allowed adjustment against each other, however, the Corporate Debtor has failed to bring on record the said Amendment Agreement.

- (ii) It is denied that the agreement dated 14.02.2022 was later amended by an Amendment Agreement or under the agreement read with the Amendment Agreement between February 2022 to April 2022.
- (iii) It is denied that all the POs were issued under the same agreement dated 14.02.2022, which was later also amended by the Amendment Agreement allowing for adjustments against each other as and when required. Under the said Agreement, only the first PO was issued and all goods under the same was delivered by the Corporate Debtor against payment of money by the Operational Creditor.
- (iv) It is disputed that under Clause 2.4 of the first PO, the shipment of the coal by the Corporate Debtor was subject to the compliance of Clause 11 of the first PO, as alleged or at all.
- (v) All compliances under the first PO was duly met, therefore, payment against the goods supplied under the first PO was made by the Operational Creditor.
- (vi) There was no relation whatsoever between the first PO and the second PO, therefore, the question of allowing adjustments on account of the first PO by the Operational Creditor could not have arisen.
- (vii) It is denied that as against clause 11 of the first PO, no LC was established by the Operational Creditor in favour of the Corporate Debtor or the Corporate Debtor in utmost good faith on 6.03.2022 shipped the first PO for an approximate value of Rs.22.6 crores or that the Operational Creditor did not adhere to the timelines specified under the first PO or the Agreement dated 14.02.2022, as alleged or at all.



(viii) The Corporate Debtor as an afterthought is raking out issues to create pre-existing disputes in attempt to shy away from returning the legitimate advance amount paid by the Operational Creditor to the Corporate Debtor.

(ix) It is denied that after the first PO was raised and shipments made, there were certain further supplies made to the Operational Creditor on an ad hoc basis for which invoices were raised by the Corporate Debtor or that the Corporate Debtor in utmost good faith or to build relations between the Operational Creditor and the Corporate Debtor again honoured its obligations or shipped the goods demanded in these separate individual invoices, as alleged or at all.



(x) It is denied that the Corporate Debtor raised an invoice of Rs.32,47,26,630/- on the Operational Creditor for supply of goods under the first PO, as they were outstanding or that even after supply of goods under the first PO or additional supplies vide separate individual invoice by the Corporate Debtor or the Operational Creditor failed to pay the outstanding amounts, as alleged or at all.

(xi) There was nothing due and payable by the Operational Creditor to the Corporate Debtor under the first PO or otherwise. The issue of adjustment of sums of money raised by the Corporate Debtor and the same being unpaid by the Operational creditor are all moonshine defences in order to mislead this Adjudicating Authority and concoct a case pertaining to pre-existing dispute in order to derail the present proceeding.

(xii) The corporate debtor, apart from bald assertions, has failed to bring on record any such contemporaneous documents to demonstrate that any

sum is due and payable by the Operational Creditor to the Corporate Debtor.

(xiii) It is denied that as per the ledger of the Operational Creditor maintained by the Corporate Debtor, the Corporate Debtor until 22.04.2022 had raised invoices worth Rs.77,49,09,975.11 to the Operational Creditor against which the Operational Creditor had only paid an amount of Rs.66,12,64,612.17.



(xiv) It is denied that as on April 2022, the Operational Creditor had to pay to the Corporate Debtor an amount of Rs.15,36,41,362/- against the prior goods supplied by the Corporate Debtor to the Operational Creditor. It is disputed that since there was an amount of Rs.15,36,41,362/-, which was payable by the Operational Creditor to the Corporate Debtor owing to the past conduct of the Operational Creditor on making delayed payments, the Corporate Debtor did not make upfront delivery of the goods or requested the Operational Creditor to clear the pending dues or according to the Agreement dated 14.02.2022, the Corporate Debtor had the liberty to alter the shipment schedule arising out of the delayed opening of LC by the Operational Creditor.

(xv) It is denied that the Operational Creditor later informed the official of the Corporate Debtor, who was handling the dealing between the Corporate Debtor or the Operational Creditor to cancel the first PO or following the directions given by the Operational Creditor, the Corporate Debtor cancelled the rakes booked for the first PO or owing to the said cancellation the Corporate Debtor was forced to issue a credit note to the Operational Creditor as alleged or at all.

(xvi) The demand notice under Section 8 of the IBC was duly served upon the Corporate Debtor at its registered address, as would appear from the Company Master Data obtained from the MCA website, a copy of which is annexed as Annexure E to the petition.

(xvii) It is denied that this Adjudicating Authority should not entertain the present Petition, as it suffers from mala fide concealment or suppression of relevant fact or documents.

### IA (IBC)/168/2023

8. In IA 168/2023 the Corporate Debtor has prayed to take on record the following additional documents:

- (i) Amendment to Agreement dated 14.02.2022 entered between the Corporate Debtor and the Operation Creditor (annexed as Document D-1 of the IA 168/2023.
- (ii) Financial Statements of the Corporate Debtor (annexed as Document D-2 of the IA 168/2023) evidencing that it is a going concern.
- (iii) Copy of ledger account of Operational Creditor maintained in the books of the Operational Creditor, which is annexed as Document D-3 of the IA 168/2023.
- (iv) Copy of invoices (annexed as Document D-4 of the IA 168/2023) raised by Corporate Debtor upon the Operational Creditor.

9. It has been stated in the IA 168/2023 that the additional documents are relevant and material for the effective adjudication of the Petition and no prejudice would be caused to any party, if additional documents are allowed to be placed on record.

**COUNTER BY THE OPERATIONAL CREDITOR:**

10. The Operational Creditor in the Counter filed vide Diary No. 5020 dated 05.06.2023 stated that:

- (i) The Corporate Debtor has failed to aver as to why additional documents are relevant for the adjudication of the present dispute at hand.
- (ii) It is trite law that a party seeking leave to bring on record additional documents needs to justify dispute. and/ or substantiate the relevance of such documents for adjudication.
- (iii) The IA 168/2023 does not contain any such pleading, which would necessitate bringing on record purported documents, as has been sought to be relied by the corporate debtor.
- (iv) The debt in the present case has arisen out of the PO No. 3052401 dated 20.04.2022, which is a standalone PO and is separate and distinct from all the transactions that took place between the Operational Creditor and the Corporate Debtor in the past.
- (v) Prior to the issuance of the said PO, the Operational Creditor issued upon the Corporate Debtor, another PO bearing PO No. 3052095 dated 22.02.2022. The Amendment Agreement dated 14.02.2022, which the Corporate Debtor seeks to rely upon pertains to the first PO and categorically finds mention of the same in the Amendment Agreement. Such fact goes on to clearly demonstrate that inasmuch as the operational debt in the company petition has arisen vis-a-vis the said PO, the Amendment Agreement pertaining to the first PO is of no consequence and/ or relevance to the present dispute.



(vi) With respect to the financial statement relied upon by the Corporate Debtor, the Operational Creditor states that operational debt has fallen due on the part of the Corporate Debtor. Therefore, reliance on the financial statement to evince that the Corporate Debtor is a going concern will not come to aid of the Corporate Debtor.

(vii) The purported ledger account is a document, which has been unilaterally prepared by the Corporate Debtor to suit its own interest and the same has also not been reconciled by the Operational Creditor and thus merits no consideration while adjudicating the present dispute.



(viii) While relying on the purported invoices, the Corporate Debtor has attempted to club the first PO to make out a case that both the POs are inter-connected and accordingly alleged sums are due and payable by the Operational Creditor to the Corporate Debtor under the first PO as a result whereof, sums payable under the said PO stood adjusted. However, such is not the case. The Corporate Debtor has just made bald assertions to contend that the Operational Creditor has failed to honour its payment obligation under the first PO, but has failed to bring on record any contemporaneous document to establish that the Operational Creditor actually defaulted in honouring its payment obligation under the first PO.

(ix) The Corporate Debtor has, not only failed to supply coal under the said PO, but has also failed to return the advance amount taken in lieu thereof. In this regard, the Operational Creditor relies upon the email of the Corporate Debtor dated 05.08.2022 (annexed as Annexure-G to the Petition), where they have categorically expressed their inability to supply coals in terms of the said PO and also further proceeds to request the

Operational Creditor to not proceed with any official action. By such admission, it can clearly be established that neither have goods been supplied by the Corporate Debtor nor has the advance been returned taken in lieu thereof. The purported adjustment of the sums payable by the Operational Creditor under the first PO with that of the second PO, is a moonshine defence, concocted as an afterthought to scuttle the rigors of the IBC.

- (x) IA 168/2023 filed by the Corporate Debtor ought to be rejected and prayers made in the Petition should be allowed.

**IA (IBC)/164/2024:**

11. In IA 164/2024, the Corporate Debtor has preyed seeking the additional time to place on record the following additional facts/ documents:

- (i) The Corporate Debtor is a company incorporated under Companies Act, 2013 having CIN No: U52100AP2019PTC113509.
- (ii) On 14.02.2022, the Operational Creditor and Corporate Debtor entered into an Agreement for supply of non-coking, thermal/ steam coal of Indonesian origin (in bulk) by the Corporate Debtor to the Operational Creditor, which was later amended by an Amendment Agreement between February 2022 to April 2022, under which the Operational Creditor raised in two POs on the Corporate Debtor for supply of Coal as detailed below:

S. No.	Date	PO No.	Quantities	Purchase Amount (In Crores)
1.	22.02.2022	30252095 (1 <sup>st</sup> PO)	25,000 MT @ Rs.7600/MT	Rs.19 Crores (Excluding handling and cess)
2.	20.04.2022	3052401 (2 <sup>nd</sup> PO)	25,000 MT @ Rs. 9355/MT	Rs.20.13 Crores (Excluding GST, handling charges and cess)

- (iii) As per clause 6.1 of the Agreement, if the Gross Calorific Value (hereinafter referred to as the "GCV") of the coal is 4200 +/- 100 GAR is taken, then the Corporate Debtor will be eligible to bonus and price adjustment and bonus, penalties and rejection of cargo will be based and determined on the actual analysis done by the Independent Surveyor (SGS/IGI). Further, Clause 6.1.2 of the Amendment Agreement dated 14.02.2022 states as under:

"Price adjustment towards GCV and Sulphur will be adjusted from the last 20% of the payment after receipt of Discharge Port quality analysis report."



- (iv) In pursuance of the above, a joint stack sampling of steam coal in bulk lying at WQ-03 Backup Visakhapatnam Port was conducted with an independent surveyor i.e., SGS India Pvt Ltd, Visakhapatnam. Samples were taken from various points of the stacks, thoroughly mixed and after coning and quartering final composite sample was prepared at SGS India Pvt. Ltd, Visakhapatnam and the total moisture analysis jointly held on 12.04.2022 to 13.04.2022 at SGS laboratory, Visakhapatnam as per ASTM D-3302/D3302M method. The joint results of total moisture mentioned in annexure certificate No. C/IGI/C&C/230972/2223/02176, found the GCV to be 4410. A copy of this joint stack sampling report conducted by independent surveyor SGS dated 20.04.2022 attached as Document-1 to the IA 164/2024.

- (v) Consequently, as per clause 6 of the Agreement read with clause 6.1.2 of the Amendment Agreement, the Corporate Debtor is eligible to claim the bonus payments from the Operational Creditor, as the GCV is higher than 4300 GAR. Thus, the Corporate Debtor is owed dues from the Operational Creditor towards the bonus payments. The Indian Resident Director Mr.

Nanchariya Shivarama Krishna Pulakanam, sent email communications to the Corporate Debtor making a claim towards the additional bonus amount payable by the Operational Creditor to the Corporate Debtor. However, the Operational Creditor till date has never made these payments and has violated the terms of the Agreement.

(vi) Subsequently, the Corporate Debtor issued another PO No. 3052401 dated 20.04.2022 for supply of 25000 MT of Coal, having GCV 4200 (ARB) (+/- 100) for a total order value of Rs.20,13,09,500/- (Rupees Twenty Crores Thirteen Lakhs Nine Thousand Five Hundred only).

(vii) As per Clause 4.0 of the PO i.e. Payment terms are as under:

"30% of basic value will be paid as advance against submission of Proforma invoice along with order

50% through usance LC against submission of original BIL, Certificate of Origin & Insurance Certificate

20% payment will be released after making necessary adjustments in price on the basis of COA at discharge port (Haldia Port)".

(viii) In compliance with the terms of the 2<sup>nd</sup> PO, the Corporate Debtor raised a proforma invoice dated 20.04.2022 for the Order value of Rs.20,13,09,500/- (Rupees Twenty Crores Thirteen Lakhs Nine Thousand Five Hundred only) and Operational Creditor had made an initial advance payment of 30% of the basic value i.e., amount of Rs.6,03,92,850/- (Rupees Six Crores Three Lakhs Ninety-Two Thousand Eight Hundred and Fifty only).

(ix) Later, the Indian Resident Director of the Corporate Debtor Mr. Nanchariya Shivarama Krishna Pulakanam, had sent email communications to the Operational Creditor submitting the original BIL, certificate of Origin &



Insurance Certificate and other vessel nomination details as required under the terms of the 2<sup>nd</sup> PO.

- (x) However, the Operational Creditor failed to honour the payment terms as per the 2<sup>nd</sup> PO and had not issued the LC for 50% of the order value to VRC. Consequentially, the Corporate Debtor was left with no other option, but to search for another buyer for the cargo and had to incur additional freight and costs for shipping the vessel from the original destined port of Haldia port to Tuticorin port and had even incurred huge losses in the form of demurrages.



- (xi) The Corporate Debtor has always been abiding by the terms of the PO and it is the Operational Creditor, which has defaulted on its obligations. After the Operational Creditor failed to issue the L/C for 50% of the invoice amount, the Corporate Debtor had to incur additional costs, which dented the financials of the company. Unless the LC is issued, the Corporate Debtor is under no responsibility to supply the cargo. Therefore, the Corporate Debtor is under no liability to return the advance payment of Rs.6,03,92,850/- (Rupees Six Crores Three Lakhs Ninety-Two Thousand Eight Hundred and Fifty only).

- (xii) When the transactions between the Operational Creditor and the Corporate Debtor were ongoing, Mr. Nanchariya Siva Rama Krishna (Mr. Krishna), was the sole Indian resident director of the Corporate Debtor and was made responsible for overall management and control of the Corporate Debtor. The other director of the Corporate Debtor at the relevant time was Mr. Sukhdev Singh bearing DIN No. 08623180, who operated and continues to operate from Singapore.

(xiii) Till November 2022, the Corporate Debtor was under de facto and overall control of Mr. Krishna, who was responsible for taking all key decisions of Corporate Debtor and the other directors and shareholders of Corporate Debtor were kept out of the day-to-day functioning and management of Corporate Debtor.

(xiv) By taking undue advantage of the trust reposed by the Corporate Debtor, Mr. Krishna started mismanaging the Corporate Debtor, including by availing personal loans in Corporate Debtor's name, siphoning and diversions of funds from the accounts of Corporate Debtor to other entities, individually owned by him. As a result of these fraudulent transactions, in November 2022, the other Shareholders of the Corporate Debtor holding 99.99% vide board resolution dated 30th November 2022, resolved to remove Mr. Krishna from the position of director of the Corporate Debtor.

(xv) Till November 2022, the shareholders and other directors of the Corporate Debtor had sparse knowledge regarding the affairs of Corporate Debtor, as Mr. Krishna was exclusively managing it and were loath to share any information. As a result of this, a lot of the evidence and communications between the Corporate Debtor and the Operational Creditor are unavailable to the other directors and are being discovered as and when possible during the investigation and audit of the Corporate Debtor.

(xvi) The Corporate Debtor, its management and all other employees were maintaining all its company-based email communications with the service provider Zoho Corporation Private Limited (hereinafter referred to as the "Zoho") and since Mr. Krishna was the only Indian resident Director, the



mail server Administrator user rights were solely under the custody of Mr. Krishna.

(xvii) On induction of the new directors of the Corporate Debtor, Zoho informed the Corporate Debtor that Mr. Krishna has admin access to the email accounts of the Company. From further investigation, it came to the knowledge that Mr. Krishna has maintained a separate server within the Company, access to which was restricted. On contacting Zoho, the Company was informed to file a formal police complaint to take back the servers. At present, the current directors of the Corporate Debtor, even after submitting the MCA records to Zoho are being denied access to the emails of the Company, which has caused huge financial loss to the Company, as there is a complete breakdown of communication for the Company with its vendors/ customers.



(xviii) For these reasons, the Corporate Debtor is incapacitated to provide and produce the supporting documentary evidences and other information as required to substantiate the previous claims and the claims made in the present Application. In fact, the Corporate Debtor has filed a civil suit before the Honourable Senior Civil Court, Visakhapatnam vide OS 206/2023 for obtaining the server administrator rights and access to the Zoho mails, which were used by the company and the employees and that case is still pending to be disposed by the Honourable Court. A copy of the case status has been attached as Document-2 to the IA 164/2024.

12. The Corporate Debtor has further submitted in the IA 164/2024 that additional time be granted for filing of placing on record additional documents and evidence, which are extremely material and important for an effective adjudication of the case.

The Corporate Debtor is diligently working to rectify this situation and aims to swiftly procure the necessary evidence to fortify its case. Should the opportunity to present documentary evidence not be granted, it would undeniably result in a profound injustice, inflicting significant prejudice and harm upon the Corporate Debtor's ability to assert its case adequately.

**COUNTER BY THE OPERATIONAL CREDITOR:**

13. The Operational Creditor in the Counter filed vide Diary No. 771 dated 07.06.2024 has stated that:

(i) The IA 164/2024 filed by the Corporate Debtor is a frivolous application and the same ought not to be taken on record at this belated stage, as it is an abuse of the process of law and also a dishonest attempt on the part of the Corporate Debtor to circumvent the instant proceeding.

(ii) Few facts which warrant consideration of this Learned Tribunal are stated herein below:

- a. The Operational Creditor filed the petition on 28.10.2022 and the Corporate Debtor filed a "preliminary reply", wherein it was alleged for the first time that the PO of 20.04.2022, which is the subject matter of the present proceeding, was based on the agreement dated 14.02.2022. Apart from the agreement dated 14.02.2022, which concerns a separate PO, the Corporate Debtor did not bring on record a single document.
- b. Subsequently, the Corporate Debtor filed IA No. 168/2023 for the purpose of introducing additional documents, since all documents could not be brought on record in the preliminary reply. The company petition along with the Corporate Debtor's TA No. 168/2023 was initially taken



up for hearing on 21.07. 2023. When the matter was taken up for hearing and the Operational Creditor had concluded its argument, the Corporate Debtor apprised this Adjudicating Authority that they were ready to refund the advance taken by the Operational Creditor towards supply of goods after reconciliation of accounts or in the alternative would supply the coal as agreed upon by the Corporate Debtor under the subject PO. On such assurance of the Advocate appearing for the Corporate Debtor, the Operational Creditor acceded to the request of the Corporate Debtor to amicably settle the disputes between parties. Such fact is recorded in the order dated 21.07.2023 passed by this Adjudicating Authority (copy annexed with the Letter 'A').



- c. In terms of the order dated 21.07.2023, the Corporate Debtor approached the Operational Creditor to settle disputes out of Court, amicably. However, owing to lack of agreement between parties, no settlement could be arrived at between parties and the matter was posted for hearing on 25.08.2023 and this Adjudicating Authority made it clear that since there was no progress in the reconciliation process, the matter would be decided on merits. A copy of the order dated 16.08.2023 has been annexed with the letter 'B'.
- d. Ultimately, the matter was taken up for hearing on 22.04.2024, where, both parties advanced their respective arguments and order was reserved in CP 116/2022 along with Corporate Debtor's IA 168/2023. Further, this Adjudicating Authority directed exchange of written notes between parties.

- e. On 22.04.2024, both the CP 116/2022 and the Corporate Debtor's IA 168/2023 were considered.
- f. Finally, when the matter was posted on 30.04.2024 for filing of written notes, by parties, the Corporate Debtor apprised this Adjudicating Authority regarding the filing of the IA 164/2024. Therefore, the question of permitting the Corporate Debtor further documents (by way of IA 164/2024), when the matter was heard twice and reserved for orders, does not and could not have arisen. The conduct of the Corporate Debtor clearly shows that the plea of introducing further documents at this belated stage is nothing, but an afterthought, which is being used as a dilatory tactic to scuttle hearing in the instant proceeding.
- g. The Corporate Debtor in two emails dated 15.06.2022 and 05.08.2022 have categorically admitted to their liability.
- h. Under these aforesaid circumstances, the present application filed by the Corporate Debtor ought not to be taken on record and deserves to be summarily rejected.
- i. The hearing in the main matter has already been concluded on 22.04.2024, where even IA 168/2023 filed by the Corporate Debtor seeking to introduce additional documents, was also considered by this Adjudicating Authority.
- j. The story concocted by the Corporate Debtor that they were left with no other option and had to search for another buyer for the cargo or had to incur additional freight or cost for shipping the vessel from the original destined port at Haldia to Tuticorin is a mere eyewash, aimed at



misleading this Adjudicating Authority. In any event, the purported joint stack sampling report dated 20.04.2022 conducted by the independent surveyor SGS, which the Corporate Debtor seeks to introduce is wholly unrelated and has no nexus with the present proceeding inasmuch as the present application under Section 9 of IBC has been instituted by the Operational Creditor on the basis of a standalone PO dated 20.04.2022.

k. The Corporate Debtor has failed to bring on record any other contemporaneous documents to establish its demur and/ or protest regarding the substandard quality of coal supplied, clearly establishes that the purported joint stack sampling report, which is being sought to be introduced now is an afterthought.

l. The mismanagement by the directors of the Corporate Debtor is wholly irrelevant and unconnected with the facts of the present case. The Corporate Debtor averred that till November 2022, the shareholders and other directors of the Corporate Debtor had sparse knowledge regarding the affairs of the Corporate Debtor, however there is no whisper to that effect in the Corporate Debtor's preliminary reply filed in February 2023. The version now being narrated by the Corporate Debtor is a clear afterthought and mischievous attempt to derail hearing in the instant proceeding.

m. The internal issues of the Corporate Debtor has no bearing whatsoever in adjudicating the present proceeding at hand. Even the purported suit filed by the Corporate Debtor before the Hon'ble Senior Civil Court, Vishakapatnam vide OS 206 of 2023 for obtaining the alleged server



administrator rights and access to the Zoho emails was only filed on 14.06.2023, when the instant company petition was filed in the month of October 2022. Further, the Corporate Debtor has failed to explain the delay of 8 months in instituting the purported civil suit, which in turn would go onto demonstrate that the defence taken by the Corporate Debtor is a sham and moonshine defence.

n. The documents being sought to be introduced are not relevant and is wholly unconnected to the present proceeding. The question of procuring additional documents does not and cannot arise at this stage, as hearing in the matter was concluded twice, lastly on 22.04.2024.

(iii) The IA 164/2024 filed by the Corporate Debtor ought to be rejected and the prayers made in the company petition should be allowed in favour of the Operational Creditor.

### **ANALYSIS AND FINDING**

14. We have heard the learned counsels appearing for the operational creditor and corporate debtor and have perused the records.

15. Before proceeding to examine the matter, we consider it appropriate to revisit the facts of the case.

(i) During the course of hearing held on 21.07.2023, the Counsel for the Corporate Debtor submitted that they are ready to refund the amount after reconciliation or to supply the coal as per the decision of the Operational Creditor. The above proposal of the Corporate Debtor was also agreed by the Counsel of the Operational Creditor and he sought to get the instructions from the client.

(ii) Subsequently, during the course of hearing held on 16.08.2023, Counsel for the Operational Creditor informed to have received the mail from the Corporate Debtor wishing to settle the matter and the Counsel for the Corporate Debtor submitted that they would go ahead with the reconciliation expeditiously. However, during the hearing held on 25.08.2023, the Counsel for the Operational Creditor informed that the settlement proposal did not fructify and the matter was listed for hearing. Subsequently, this Adjudicating Authority vide its order dated 22.04.2024 granted the liberty to both the Parties to file the written submissions, which were filed by the Operational Creditor vide Diary No.772 dated 07.06.2024 and Corporate Debtor vide Diary No.810 dated 13.06.2024.



(iii) During the course of hearing held on 19.03.2025, it was noted that the Affidavit under section 9(3)(b) of the IBC has not been filed by the Operational Creditor. The Operational Creditor sought one week time to submit the same and subsequently filed the same vide Diary No.582 dated 07.04.2025.

(iv) During the course of arguments on 09.04.2025, it was noted based on the submissions of the parties that two POs were issued by the Operational Creditor against which the Corporate Debtor has supplied the coal against the 1<sup>st</sup> PO and advance amount paid by the Operational Creditor for supply against 2<sup>nd</sup> PO has been adjusted by the Corporate Debtor for the alleged dues against 1<sup>st</sup> PO. It was further observed that in view of these facts admitted by both the parties, the limited question, which needs to be examined in this case is: (i) whether the advance amount paid against 2<sup>nd</sup> PO can be adjusted by the Operational Creditor against dues in 1<sup>st</sup> PO

under the relevant provisions of Contract Act, Sale of goods Act or other provisions of law. (ii) Whether there is any amount due against 1<sup>st</sup> PO. Both the Counsels sought time to argue these two issues.

- (v) During the course of hearing on 05.05.2025, the Counsel of the Operational Creditor relying on Section 59 of the Contract Act, 1872 submitted that where a debtor, owing several distinct debts to one person, makes a payment to him, either with express intimation, or under circumstances implying, that the payment is to be applied to the discharge of some particular debt, the payment, if accepted, must be applied accordingly and the Corporate Debtor sought two days' time to prove that there is a pre-existing dispute between the parties, however on 07.05.2025 the Corporate Debtor reported that they could not trace out the requisite document till date.
- (vi) On 11.06.2025 after hearing both the parties the Petition as well as both the IAs were reserved for order.



16. Before proceeding further to decide the RCP (IBC)/13/9/AMR/2024, we need to decide the IA 168/2023 and IA 164/2024, vide which the Corporate Debtor has prayed to take on record the additional documents. facts in deciding the CP.

17. We note that the Corporate Debtor vide IA 168/2023 have placed the Amendment to Agreement dated 14.02.2022 entered between the Corporate Debtor and the Operation Creditor, Financial Statements of the Corporate Debtor, copy of ledger account of Operational Creditor maintained in the books of the Operational Creditor and copy of invoices raised by Corporate Debtor upon the Operational Creditor. We also note that the Corporate Debtor vide IA 164/2024 have placed

certain additional facts and the documents namely, copy of joint stack sampling report conducted by independent surveyor SGS dated 20.04.2022 and copy of case status of OS 206/2023 before the Hon'ble Senior Civil Court, Visakhapatnam.

18. After careful consideration of the documents/ facts placed on record in both the IAs, we are of the considered view that in the interest of justice, these additional documents/facts filed by the Corporate Debtor in these IAs are the necessary documents and therefore need to be taken on record for just and fair adjudication of the RCP 13/2024. In support of our view, we rely on the Judgment rendered by the Hon'ble Supreme Court judgement in the matter of **Dena Bank v. Shivakumar**

**Reddy Civil Appeal No.1650 of 2020**, the relevant extracts of which are as below:



*"144. There is no bar in law to the amendment of pleadings in an application under Section 7 of the IBC, or to the filing of additional documents, apart from those initially filed along with application under Section 7 of the IBC in Form-1. In the absence of any express provision which either prohibits or sets a time limit for filing of additional documents, it cannot be said that the Adjudicating Authority committed any illegality or error in permitting the Appellant Bank to file additional documents. Needless however, to mention that depending on the facts and circumstances of the case, when there is inordinate delay, the Adjudicating Authority might, at its discretion, decline the request of an applicant to file additional pleadings and/ or documents, and proceed to pass a final order. In our considered view, the decision of the Adjudicating Authority to entertain and/or to allow the request of the Appellant Bank for the filing of additional documents with supporting pleadings, and to consider such documents and pleadings did not call for interference in appeal."*


Accordingly, **IA (IBC)/168/2023 and IA (IBC)/164/2024 are hereby allowed.**




19. The first issue for consideration is **"Whether this Application is filed within the period of limitation"**.

The date of default as mentioned in the Part-IV of Form-5 is 20.06.2022 and the petition is filed on 01.11.2022. Thus the petition is within the period of limitation.

20. The second issue for consideration is **"Whether the Demand Notice dated 06.03.2023 was properly served"**.

- (i) A perusal of the record reveals that the Operational Creditor issued a Demand Notice dated 30.05.2022 and 10.06.2022 in Form-3, in accordance with Section 8 of the IBC via Registered Post, as well as at the email address listed on the MCA portal.
- (ii) The demand notice sent through Registered Post was returned with the remark "Item returned REFUSED". The extract track consignment filed by the Operational Creditor is reproduced below:



You are here Home >> Track Consignment

### Track Consignment

Quick help



\* Indicates a required field.

\* Consignment Number

Booked At	Booked On	Destination Pincode	Tariff	Article Type	Delivery Location
Sech Bhawan SO	20/07/2022 12:07:38	530003	45.00	Registered Letter	Andhra University S.O

Event Details For : RW466238600IN  
 Current Status : Out for Delivery

Date	Time	Office	Event
01/08/2022	12:42:28	Sech Bhawan SO	Out for Delivery
01/08/2022	12:24:00	Sech Bhawan SO	Item Received
01/08/2022	11:22:03	Sech Bhawan SO	Out for Delivery
01/08/2022	10:12:48	Sech Bhawan SO	Item Received
01/08/2022	05:35:19	KOL AP TMO	Item Dispatched
31/07/2022	03:50:57	KOL AP TMO	Item Received
31/07/2022	01:54:17	Kolkata RMS Mails TMO	Item Dispatched
31/07/2022	01:50:51	Kolkata RMS Mails TMO	Item Received
31/07/2022	01:04:13	Kolkata CRC L1R	Item Dispatched
30/07/2022	23:31:30	Kolkata CRC L1R	Item Bagged
30/07/2022	20:22:30	Kolkata CRC L1R	Item Received
27/07/2022	14:38:19	Visakhapatnam RMS L1R	Item Received
27/07/2022	09:13:28	Andhra University S.O	Item Dispatched
27/07/2022	09:08:31	Andhra University S.O	Item Bagged
26/07/2022	15:35:31	Andhra University S.O	Item Returned Refused
26/07/2022	15:21:09	Andhra University S.O (Beat Number:8)	Not Delivered REFUSED
26/07/2022	09:08:31	Andhra University S.O	Out for Delivery
25/07/2022	16:55:09	Andhra University S.O	Not Delivered Addressee cannot be located
25/07/2022	10:05:44	Andhra University S.O	Out for Delivery
25/07/2022	08:29:02	Andhra University S.O	Item Received
23/07/2022	16:34:04	Visakhapatnam RMS L1R	Item Dispatched
23/07/2022	16:11:26	Visakhapatnam RMS L1R	Item Bagged
23/07/2022	12:07:03	Visakhapatnam RMS L1R	Item Received
21/07/2022	11:38:50	KOL AP TMO	Item Received
21/07/2022	09:21:20	Kolkata RMS Mails TMO	Item Dispatched
21/07/2022	09:00:16	Kolkata RMS Mails TMO	Item Received
21/07/2022	06:24:18	Kolkata CRC L1R	Item Dispatched
21/07/2022	05:23:12	Kolkata CRC L1R	Item Bagged
21/07/2022	01:52:36	Kolkata CRC L1R	Item Received
20/07/2022	15:34:46	Sech Bhawan SO	Item Bagged
20/07/2022	12:07:38	Sech Bhawan SO	Item Booked

- (iii) Nevertheless, the email dated 20.07.2022 was successfully delivered.
- (iv) Accordingly, the service of notice shall be deemed to have been effected.

21. The next issue for consideration is **“Whether there is any pre-existing disputes between the Operational Creditor and the Corporate Debtor”**.

- (i) The one of contention raised by the Corporate Debtor is applicability of the Agreement dated 14.02.2022 and Amendment to the said Agreement to the 2<sup>nd</sup> PO. We observe that both of these are not applicable to the 2<sup>nd</sup> PO (No.3052401 dated 20.04.2022).
- (ii) As per clause 2 of the Agreement dated 14.02.2022, the shipment quantity is only 25,000 MT +/- 10%, and 25,000 MT has already been supplied by the Corporate Debtor vide 1<sup>st</sup> PO (No. 3052095 dated 22.02.2022). The relevant extract of clause 2 of the Agreement is reproduced below:

2. COMMODITY, QUANTITY, DELIVERY POINT and SHIPMENT SCHEDULE

2.1 Commodity:  
Non-Coking - Thermal/Steam Coal in bulk of Indonesian Origin.

2.2 Quantity and Schedule

Shipment #	Lay can	Qty MT	Notes
1 (One)	15-20th Feb ,2022 at Maura Banyuasin	25,000	+/- 10 %Vessel's Option
Total Quantity		25,000	+/- 10 % Vessel's Option

Any increase/decrease of volume requested from BUYER during the contract period is subjected to SELLER's confirmation. Any increase /decrease requested by SELLER during the contract period is subject to BUYER's confirmation.

- (iii) Further, the Amendment of Agreement dated 14.02.2022 was made with reference to the Agreement dated 14.02.2022 and PO no.3052401 dated 20.04.2022 and is thus not applicable to the 2<sup>nd</sup> PO (No. 3052401 dated



20.04.2022). The relevant extract of the Amendment of Agreement is reproduced below:

**Amendment of Agreement dated 14.02.2022**

With reference to our Agreement dated 14.02.2022 & Purchase order no. 3052095 dated 22.02.2022 following clause is amended as follows :

- (iv) In reply to the email dated 13.06.2022 and 30.05.2022 of the Operational Creditor regarding non-supply of coal against POs including 1<sup>st</sup> PO, the Corporate Debtor vide email dated 15.06.2022 has stated that they are going to finish the shipment in coming month, which shows the acknowledge of operational debt by the Corporate Debtor.



From: Nanchralya SRK <md@vrcoal.com>  
 Sent: 15 June 2022 10:39  
 To: Animesh Chattopadhyay <animesh.chattopadhyay@hpl.co.in>  
 Cc: Krishna <md@vrcoal.com>; Avijit Kundu <avijit.kundu@hpl.co.in>; Arun Chanda <arun.chanda@hpl.co.in>; Kakoli Saha <kakoli.saha@hpl.co.in>  
 Subject: [External]; Re: FW: Non Supply of Coal against our Purchase Order Nos : 3052212 & 3052401  
 Importance: High

**CAUTION - EXTERNAL EMAIL:** This email originated from outside the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Dear Sir

Greetings of the day.

Due to unforeseen circumstances in my family and fathers health I couldn't come in touch with you or your team and I apologise for the misunderstandings rose due to this.

We are regular Importers sir and we respect your business given to us and always try to give the best cargo for your industry. We are going to finish the shipment in coming month and seek your support in near future with supply of coal to your esteemed firm.

Best Regards,

**Nanchralya SRK Pulakanam**

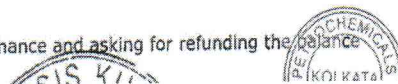
President Director  
 Call/Wa : (+91)6301286069

----- On Mon, 13 Jun 2022 15:00:03 +0530 Animesh Chattopadhyay <animesh.chattopadhyay@hpl.co.in> wrote -----

Dear Sir,

This refers to our earlier two letters sent through mail on 30<sup>th</sup> May, 2022 and also through Registered post which has been received by you on 03.06.2022, HPL yet to get any reply from your end.

HPL, further intimating you about your non performance and asking for refunding the balance amount lying with you.



Please treat this as the final intimation from HPL to settle this case amicably, otherwise HPL will be compelled to initiate action as per the law.

Personal Regards  
Animesh  
(9830038235)

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**From:** Animesh Chattopadhyay  
**Sent:** 30 May 2022 18:11  
**To:** VR Commodities <sr@vrccoal.com>; md@vrcoal.com; Krishna <md@vrccoal.com>  
**Cc:** Suresh Kumar Agarwal <sureshkr.agarwal@hpl.co.in>; Ranjana Datta <ranjana.datta@hpl.co.in>; Avijit Kundu <avijit.kundu@hpl.co.in>; Arun Chanda <arun.chanda@hpl.co.in>  
**Subject:** Non Supply of Coal against our Purchase Order Nos : 3052212 & 3052401

Dear Sir,

Please find herewith the above letters against your non supply of coal resulting an immense loss to our plant .  
You are expected to react within the scheduled time line as prescribed in the above letter.

Personal Regards  
Animesh Chattopadhyay  
(9830038235)



During the course of hearing held on 16.08.2023, the Counsel for the Operational Creditor informed to have received the mail from the Corporate Debtor wishing to settle the matter and Counsel for the Corporate Debtor submitted that they would go ahead with the reconciliation expeditiously. The above submission of the Corporate Debtor would also amount to acknowledge of operational debt by the Corporate Debtor.

- (vi) However, during the hearing held on 25.08.2023, the Counsel for the Operational Creditor informed that the settlement proposal did not fructify and the matter was listed for hearing.
- (vii) The Demand Notice in Form 3 was issued by the Operational Creditor on 20.07.2022. The Operation Creditor has filed affidavit under Section 9(3)(b) of the Code vide Diary No.582 dated 07.04.2025 affirming that the Operation Creditor has not received any notice of dispute under the IBC,

2016 in relation to the unpaid operational debt due and payable from the Corporate Debtor.

(viii) Although, during the course of hearing 05.05.2025, the Corporate Debtor sought two days' time to prove that there is a pre-existing dispute between the parties, however on 07.05.2025 the Corporate Debtor reported that they could not trace out the requisite document till date.

(ix) In view of the discussion above, we are of the considered view that there is no pre-existing dispute between the parties.

22. Before admission, this Adjudicating Authority has to satisfy that the Application is complete. We have gone through the contents of the Application filed by the Financial Creditor and found that the same is complete.

23. As a sequel to the discussion above, the present Application bearing **RCP (IB)/13/9/AMR/2024** filed by the Financial Creditor under section 9 of the Code for initiating CIRP against the Corporate Debtor **VR Commodities Private Limited** (CIN:U52100AP2019PTC113509), is hereby **admitted** and accordingly, the Moratorium is declared in terms of Section 14 of the Code:

- (i) Moratorium under section 14 (1) for prohibiting all of the following, namely:
- (a) The institution of suits or continuation of pending suits or proceedings against the Corporate Debtor including execution of any judgement, decree or order in any court of law, tribunal, arbitration panel or other authority;
  - (b) Transferring, encumbering, alienating or disposing of by the Corporate Debtor any of its assets or any legal right or beneficial

interest therein;

(c) Any action to foreclose, recover or enforce any security interest created by the Corporate Debtor in respect of its property including any action under the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002;

(d) The recovery of any property by an owner or lessor, where such property is occupied by or in the possession of the Corporate Debtor.



It is hereby clarified that notwithstanding anything contained in any other law for the time being in force, a licence, permit, registration, quota, concession, clearance or a similar grant or right given by the Central Government, State Government, local authority, sectoral regulator or any other authority constituted under any other law for the time being in force, shall not be suspended or terminated on the grounds of insolvency, subject to the condition that there is no default in payment of current dues arising for the use or continuation of the license, permit, registration, quota, concession, clearances or a similar grant or right during the moratorium period;

(iii) The provisions of sub-section of section 14(1) shall not apply to such transactions, agreements or other arrangement, as may be notified by the Central Government in consultation with any financial sector regulator or any other authority; and also, to a surety in a contract of guarantee to a corporate debtor.


- (iv) The supply of essential goods or services to the Corporate Debtor, as may be specified, shall not be terminated or suspended or interrupted during moratorium period, except where such Corporate Debtor has not paid dues arising from such supply during the moratorium period or in such circumstances, as may be specified.
- (v) The order of moratorium shall have effect from the date of this order till the completion of the CIRP or until this Bench approves the resolution plan under sub-section (1) of Section 31 or passes an order for liquidation of the Corporate Debtor under Section 33 as the case may be.



24. The Financial Creditor in Part III of the petition has not proposed the name of the IRP and has stated that the same is optional. In view of the above, we consider to appoint Mr. Chaitanya Kiran Immaneni as IRP in the matter from the list of Insolvency Professional provided by the IBBI for the period of July, 2025 to December, 2025. The credentials of the proposed IRP was verified on the IBBI website; the relevant extract of the IBBI website is as below:

Name of the IP	IMMANENI CHAITANYA KIRAN
Registration no	IBBI/IPA-002/IP-NO1257/2023-2024/14280
Date of Registration	24-Apr-23
Member of IPA	ICSI Institute of Insolvency Professionals
Member of IPA Since	12-Dec-22
Member of IPE	Sankalp Restructuring Private Limited
Email id	CIMMANENI[at]OUTLOOK[dot]COM
Address	40-26-22 MOHIDDIN STREET OPP BSNL EXCHANGE ,CHANDRAMOULIPURAM VIJAYAWADA ,DEEPAK SILVER AND RAILWAY RESERVATION COUNTER ROAD BESIDE M & M SHOWROOM ROAD ,Krishna,Andhra Pradesh ,520010
Have Valid AFA	Yes
AFA Certificate No.	AA2/14280/02/300626/203886
AFA Valid Upto	30-Jun-26

25. Accordingly, we hereby appoint Mr. Chaitanya Kiran Immaneni, Reg. No: IBBI/IPA-002/IP-NO1257/2023-2024/14280 email ID- CIMMANENI@OUTLOOK.COM having registered address at: 40-26-22 Mohiddin Street Opp BSNL Exchange, Chandramoulipuram Vijayawada, Deepak Silver and Railway Reservation Counter Road, Beside M & M Showroom Road, Krishna, Andhra Pradesh, 520010 as IRP in the matter with the following directions:

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- (i) The term of appointment of Mr. Chaitanya Kiran Immaneni, shall be in accordance with the provisions of Section 16(5) of the Code, subject to his written consent to be filed within 7 days of this order;
  - (ii) In terms of Section 17 of the Code, from the date of this appointment, the powers of the Board of Directors shall stand suspended and the management of the affairs shall vest with the IRP and the officers and the managers of the Corporate Debtor shall report to the IRP, who shall be enjoined to exercise all the powers, as are vested with the IRP and strictly perform all the duties as are enjoined on the IRP under Section 18 and other relevant provisions of the Code, including taking control and custody of the assets, over which the Corporate Debtor has ownership rights recorded in the balance sheet of the Corporate Debtor, etc. as provided in Section 18(1)(f) of the Code. The IRP is directed to prepare a complete list of the inventory of assets of the Corporate Debtor;
  - (iii) The IRP shall strictly act in accordance with the Code, all the rules framed thereunder by the Board or the Central Government and in accordance with the Code of Conduct governing his profession and as an Insolvency Professional with high standards of ethics and moral;
  - (iv) The IRP shall cause a public announcement within three days as

contemplated under Regulation 6 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 of the initiation of the CIRP in terms of Section 13(1)(b) read with Section 15 of the Code calling for the submission of claims against Corporate Debtor;

(v) The IRP/RP shall prepare the Audited Financial Statements as on date of the CIRP and shall submit before the CoC for consideration.




(vi) The IRP/RP shall also ensure that all the assets appearing in the Financial Statements on the CIRP date have been considered in the valuation report. The IRP/RP shall send individual communication through post or electronic means along with a copy of public announcement to all the creditors as per last available books of accounts / financial statements on the CIRP date of Corporate Debtor as prescribed under Regulation 6A of IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.

(vii) The Corporate Debtor, its Directors, personnel and the persons associated with the management shall extend all cooperation to the IRP in managing the affairs of the Corporate Debtor as a going concern and extend all cooperation in accessing books and records as well as assets of the Corporate Debtor;

(viii) The Suspended Board of Directors is directed to give complete access to the Books of Accounts of the Corporate Debtor maintained under Section 128 of the Companies Act. In case, the books are maintained in the electronic mode, the Suspended Board of Directors are to share with the Resolution Professional all the information regarding Maintaining the Backup and regarding Service Provider kept under Rule 3(5) and Rule 3(6)

of the Companies Accounts Rules, 2014 respectively as effective from 11.08.2022, especially the name of the service provider, the internet protocol of the Service Provider and its location, and also address of the location of the Books of Accounts maintained in the cloud. In case accounting software for maintaining the books of accounts is used by the Corporate Debtor, then IRP/ RP is to check that the audit trail in the same is not disabled as required under the notification dated 24.03.2021 of the Ministry of Corporate Affairs. A reference is made to the provisions of Section 128(5) of the Companies Act 2013, whereby every company should maintain its books of accounts for not less than eight financial years immediately preceding a financial year. Minutes and statutory records are the principal documents of the company that should be maintained and preserved since inception.

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- (ix) In view of the above mandatory provisions, the suspended directors of the board will ensure that the books of accounts for the eight previous financial years preceding the date of this order be made available to the IRP/ RP within 15 days of the initiation of the CIRP order. The statutory auditor is also directed to share the records maintained by him in the course of the audit of the accounts of the Corporate Debtor for the period of three years prior to the date of initiation of this CIRP order within the same period of 15 days.
- (x) In case of any non-cooperation by the Suspended Board of Directors or the statutory auditors, the IRP/RP may take the help of the police authorities to enforce this order. The concerned police authorities are directed to extend help to the IRP/ RP in implementing this order for

retrieval of relevant information from the systems of the Corporate Debtor, the IRP/ RP may take the assistance of Digital Forensic Experts empanelled with this Bench for this purpose. The Suspended Board of Directors is also directed to hand over all user IDs and passwords relating to the Corporate Debtor, particularly for government portals, for various compliances. The IRP is also directed to make a specific mention of non-compliance, if any, in this regard in his status report filed before this Adjudicating Authority immediately after a month of the initiation of the CIRP.



- (xi) The IRP/RP is directed to approach the Government Departments, Banks, Corporate Bodies and other entities with request for information/ documents available with those authorities/ institutions/ others pertaining to the Corporate Debtor, which would be relevant in the CIRP. The Government Departments, Banks, Corporate Bodies and other entities are directed to render the necessary information and cooperation to the IRP/RP to enable him to conduct the CIRP as per law.
- (xii) The IRP shall, after collation of all the claims received against the Corporate Debtor and the determination of the operational position of the Corporate Debtor constitute a Committee of Creditors and shall file a report, certifying constitution of the Committee to this Adjudicating Authority on or before the expiry of thirty days from the date of his appointment, and shall convene first meeting of the Committee within seven days of filing the report of constitution of the Committee;
- (xiii) The IRP shall also serve a copy of this order to all relevant statutory departments such as Income Tax, GST (Centre and State), Provident Fund authorities, trade unions, and employee associations to inform them about

the commencement of CIRP.

(xiv) The IRP is directed to send a regular progress report to this Adjudicating Authority every fortnight.

26. The Financial Creditor is directed to deposit Rs.4,00,000/- (Rupees Four Lakhs only) with the IRP to meet out the expense to perform the functions assigned to him in accordance with Regulation 6 of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Person) Regulations, 2016. The amount, however, will be subject to adjustment by the Committee of Creditors as to be duly accounted for by IRP and shall be paid back to the Financial Creditor.

27. A copy of this Order shall immediately be communicated to the Financial Creditor, the Corporate Debtor, IBBI, and the IRP named above by the Court Officer/ Registry of this Adjudicating Authority.

**Accordingly, RCP (IB)/13/9/AMR/2024 stands admitted.**

Sd/-

**Umesh Kumar Shukla  
Member (Technical)**

Sd/-

**Kishore Vemulapalli  
Member (Judicial)**

Reddy Pavani, LRA

प्रमाणित प्रतिलिपि / CERTIFIED TRUE COPY  
 केस संख्या JACBC/164/2024, JACBC/165/2023 in  
 CASE NUMBER RCP(IBC)/13/9/AMR/2024 in CP(IBC)/116/9/AMR/2022  
 दिनांक का तारीख  
 DATE OF JUDGEMENT 25.08.2025  
 नति विचार किया गया तारीख  
 COPY MADE READY ON 26.08.2025

TN/KUM/L  
 Deputy Registrar / Assistant Registrar /  
 Court Officer  
 NATIONAL COMPANY LAW TRIBUNAL  
 AMARAVATI BENCH