

SEL/NSE/IC/22-23/1

Date: 27th July, 2022

To,
Investor Services Cell
National Stock Exchange of India Ltd.,
Exchange Plaza, Plot No. C/1,
G-Block, Bandra-KurlaComplex,
Bandra (E), Mumbai – 400051

Ref: ISC Complaint NSEHO/0005635/22-23/CO/ISC dated 19th July, 2022

Sub: False complaint against Supreme Engineering Ltd.

Dear Sir/Ma'am,

1. This is with respect to the letter addressed by G.L. Engineering Industries Ltd. (the said Company) on the alleged misrepresentation made by us in the audit report. The same complain was made by the said Company by letter dated 05th March, 2021 for which reply with clarification was provided on 8th March, 2021 and subsequently on 29th June, 2021 for which reply with clarification was provided on 11th October, 2022.
2. Firstly, the complain has no relation to the stock exchange and does not involve any matter related to trading or equity transactions of the company.
3. The complainant G.L. Engineering Industries Pvt Ltd tried to use fraudulent documents to file insolvency proceedings against us in NCLT court; however, the NCLT court stated that the invoices were all paid. Basis of the documentation, the case was dismissed in our favour. Attached NCLT order for your reference.
4. Post that, the complainant G.L. Engineering Industries Pvt Ltd appealed in NCLAT court; however the NCLAT court also dismissed their appeal. Attached copy of NCLAT order for your reference.
5. All the claims therein are totally false, frivolous and unsubstantiated, rather contrary thereto, all those alleged payments have already been in fact paid by us and the said Company is trying simply put pressure to extort money from us by appealing now in Supreme court.. We firmly believe that the higher Court will also recognise this as done by NCLT and NCLAT.
6. Since the alleged liability does not exist and the courts have also recognised the same, there is no reason to disclose the same in our audit report.

Please acknowledge the receipt of this letter.

Yours faithfully,

For Supreme Engineering Limited



Abhinav Chowdhri
Executive Director
DIN: 07121484
Encl: As above

**IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH, COURT NO. V**

CP (IB)424/MB/2020

Under Section 9 of the I&B Code, 2016

In the matter of

**G L Engineering Industries Private
Limited**

39/44, TV Chidambaram Road, Sion
(east), Mumbai – 400 022

... Petitioner

v/s

Supreme Engineering Limited

(Formerly known as Supreme
Heatreaters Pvt. Ltd.)

R-223, MIDC Complex, Rabale, Thane
Belapur Road, Navi Mumbai – 400 701

...Respondent

Order Delivered on: 06.05.2021

Coram:

Hon'ble Smt. Suchitra Kanuparthi, Member (Judicial)

Hon'ble Shri. Chandra Bhan Singh, Member (Technical)

For the Petitioner: Mr. Pratap Sampat a/w Ms. Aarti Suvarna,
Advocates.

For the Respondent: Mr. Shyam Kapadia a/w Aditi Hambarde,
Advocates.

Per: Chandra Bhan Singh, Member (Technical)

ORDER

1. This is an Application No. CP(IB)424/MB/2020 filed by G. L. Engineering Industries Private Limited, Petitioner, who has furnished Form No. 5 under Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 in the capacity of "Operational Creditor" by invoking the provisions of section 9 of Insolvency & Bankruptcy Code, 2016 (**Code**) against Supreme Engineering Limited, Respondent, for initiating Corporate Insolvency Resolution Process (**CIRP**).

2. In the requisite Form, under the head "Particulars of Operational Debt" the total amount in default is stated to be Rs. 4,64,65,107/- as on 31.07.2019 plus further delayed payment charges @1.92% per month for 5 months from 01.08.2019 to 31.12.2019.

BRIEF HISTORY OF THE CASE

3. The Petitioner is a private limited company and in the business of supply of steel materials, etc. and the Respondent is a public limited company and engaged in manufacturing and dealing in the business of steel products.

4. The Petitioner states that on receiving oral instructions from the Respondent, the Respondent have executed orders for supply of steel materials as per business practice agreed, accepted and followed between the Petitioner and the Respondent. The Petitioner states that they had sold, supplied and delivered to the Respondent from time to time on high seas sale basis and domestic local sales in India of steel materials, etc. The Petitioner further states that the Respondent has not raised any objections regarding quality, quantity, delivery schedule and rate thereof on receipt of the steel materials.

5. The Petitioner further states that the Respondent had given assurances to clear all the outstanding debts due and payable be them against the said supplies made to them and that the Petitioner even accommodated the Respondent for delayed payment from time to time though the amounts were due upon the receipt of supplies of the goods by the Respondent.

6. The Petitioner states that vide the confirmation letter dated 30.05.2019 and further letter dated 01.07.2019 issued by the Respondent to the Petitioner, the Respondent have admitted debt/liability of the two dishonoured cheques of Rs. 4,16,18,466/- and Rs. 7,76,706/- issued by the Respondent, which is as per the Petitioner an admitted liquidated debt/liability by the Respondent.

7. The Petitioner further mentions that on 30.05.2019 they received a confirmation letter issued by the Respondent. After receipt of the said letter wherein the Respondent had admitted the liability of Rs. 4,16,18,466/- and accordingly issued a cheque of Rs. 4,16,18,466/- in favour of the Petitioner, which was payable on 30.06.2019, thus initially the debt of Rs. 4,16,18,466/- fell due on 30.06.2019.

8. The Petitioner states that thereafter they received another letter dated 01.07.2019 from the Respondent seeking extension of time for the presentment of the said cheque by the Petitioner and requesting the Petitioner to make said presentation of the cheque on 31.07.2019 instead of 30.06.2019.

9. The Petitioner states that the Respondent also agreed to pay the delayed payment charges for permitting the extension of said period until 31.07.2019 which amounts to Rs. 7,76,706/-. Thereafter the Respondent issued a cheque of Rs. 7,76,706/- to the Petitioner for delayed payment charges.

10. Thereafter both the cheques issued by the Respondent in favour of the Petitioner were deposited in the Bank for realisation. The Petitioner states that both the cheques were dishonoured and returned vide memo dated 02.08.2019 with a remark "Exceeds Arrangement" and "Funds Insufficient" respectively.

11. After that the Petitioner through its Advocate had issued a notice dated 26.08.2019 under the provisions of Negotiable Instrument Act, 1881 calling upon the Respondent to pay the returned cheques amount and overdue delay payment charges @1.92% p.m. as agreed by the Respondent until the date of payment within 15 days from the date of the receipt of the said notice. In spite of receipt of the said notice the Respondent failed to pay the amount and overdue interest to the Petitioner. The Respondent also failed to reply to the said notice.

12. Thereafter the Petitioner made several follow up reminders, but the Respondent failed to make the payment. Hence, on 04.11.2019 and on 07.11.2019 the Petitioner issued demand notices demanding a payment of Rs. 4,23,95,172/- along-with delayed payment charges @1.92% p.m. until the date of payment as due and payable by the Respondent to the Petitioner. The said notices were received by the Respondent on 05.11.2019 and on 09.11.2019.

13. The Respondent, through its advocate replied to the said Demand Notice through its advocate on 14.11.2019 denying the liability.

SUBMISSIONS BY THE RESPONDENT IN REPLY

14. The Respondent replied to the said Demand Notice through its advocate on 14.11.2019 denying the liability. The Respondent also filed a reply to the petition raising following contentions;

- a. The Respondent denied having signed the letter dated 30.05.2019 and thus the same, he says, is fabricated, forged and malafide.
- b. The Respondent mentions that the notice dated 26.08.2019 for payment of the alleged unpaid sum of Rs. 4,23,95,172/- is completely misconceived, baseless and denied. The definition of "operational debt" required "a claim in respect of provisions of goods or services including employment or a debt in respect of the payment of dues arising under any law for the time being in force and payable to the Central Government, any State Government or any local authority". The Respondent says that the Petitioner has failed to disclose the type and details of the goods alleged under the debt now sought to be claimed. Therefore, the Respondent mentions that the Petitioner has miserably failed and deliberately neglected to furnish any details with respect to the provisions of goods in terms of date on which these transactions took place, quantities, amounts, purchase orders, contracts, invoices, delivery challans and/or receipts.
- c. The Respondent submits that the Petitioner has used the term "oral orders" and usual "business practice" in order to conceal the fact that there were actually no transactions for provision of goods. The Petitioner has failed to provide any such details as mandate under Section 8 of the Code. The Petitioner failed to produce the aforesaid documents even at the time of inspection held on 19.12.2019 citing that the same are only "supplementary" as specifically stated in the letter dated 20.12.2019.
- d. In the absence of any such proof of transactions, the said claim of the Petitioner is merely an extortion based on false and fabricated letters, after forging Respondent's

signature and thus the present petition deserves to be dismissed in limine with costs.

- e. In view of absence of details of the transactions including any documents to substantiate and in the absence of relevant dates, amounts and quantity, the Respondent denies any/all transactions having taken place in the past three years for which any sums are due and thereby deny the legal validity and locus of this present Petition.
- f. The Respondent through its advocate vide its letter dated 14.11.2019 replied to the Petitioner denying the allegations therein, particularly denying any operational debt due at all. The Petitioner, once again issued a Notice vide letter dated 07.11.2019 for an alleged unpaid Operational Debt and thereafter filed the present Petition. However, the Petitioner has suppressed Respondent's earlier letter dated 08.01.2020 addressed to the Advocates for the Petitioner. Vide the said letter, the Respondent has *inter-alia* denied having signed or given any acknowledgement of debt.
- g. The Respondent mentions that the Petitioner is misusing the cheques given by Respondent only for the purpose of security. The said cheque was given only out of due force and undue influence upon the Respondent without any admission of liability by the Respondent.

SUBMISSIONS BY THE PETITIONER IN REJOINDER

15. The Petitioner in its rejoinder made submissions as follows;
 - a. the Petitioner deny the allegations made therein as false in view of the fact that no evidence substantiating the said allegations is made out in absence of any evidential proof in support thereof in the said reply.

- b. Petitioner mentions that its claim squarely falls within the definition of Section 5(21) of the I&B Code relating to the operational debt on the basis of documents annexed to the application. The application is in due compliance of the provisions of Law u/s 8 of I &B Code read with regulations applicable thereto.
- c. the Petitioner states that the contents of the documents annexed to the application sufficiently show that the claim of the Petitioner is for the operational debt due from the Respondent.
- d. In the issue of limitation, the documents of unequivocal confirmation of debt as annexed to application are sufficient for the purpose of the existence of the operational debt.
- e. While denying the existence of transactions relating to the claim, the Petitioner has not given any supportive documents describing the nature of transactions as to the truth about the same on the records of the Respondent.
- f. Regarding the letter of Respondent's Advocate dated 08.01.2020, it was received only after the filing of the NCLT application on 10.01.2020. The Petitioner have replied to the said letter by their letter dated 13.01.2020, which is duly received by the Advocate of the Respondent.

FINDINGS

16. The Bench notes that this Petition has been filed by the Applicant, G. L. Engineering Industries Private Limited under Section 9 of the IBC, 2016 for a total debt amount of Rs. 4,64,65,107/- due as operational debt from the Respondent. The basis of this claim, as mentioned by the Petitioner, is based on supply of steel material on high seas sale basis as well as domestic sale between the Applicant and the Respondent.

17. The Bench notes that the sole basis of claim, as far the Petition is concerned, rests as the Petitioner mentions, on two confirmation letters dated 30.05.2019 and 01.07.2019 regarding payment of outstanding dues by the Respondent for the supply of steel materials and goods delivered on high seas sales basis and domestic local sales in India. The sum and substance of letter dated 30.05.2019 is that after adjustments of all, as on 30.06.2019, a sum of about Rs. Rs. 4,16,18,466/- crore is due. Similarly, in the letter dated 01.07.2019 as per the Petitioner, a request for extension of time was sought by the Respondent up to 31.07.2019, for which the Respondent also agreed to pay the delayed payment charges for permitting the extension of said period until 31.07.2019 which amounts to Rs. 7,76,706/-. With the letter dated 30.05.2019 a cheque of Rs.4,16,18,466/- was issued by the Respondent.

18. Similarly, vide letter dated 01.07.2019 a cheque of Rs.7,76,706/- dated 31.07.2019 was issued by the Respondent. The Petitioner mentions that since the two cheques have been dishonored, they have filed Petition under Section 9 of IBC, 2016.

19. The Bench here also notes that with the Petition no invoice or any details with respect of provision of goods in terms of debt for which the transaction has taken place, quantities, amount, purchase orders, contract, invoices, delivery challan or any receipt were submitted. The Petitioner has just mentioned that these transactions were as a result of "oral orders" and usual "business practice" between the parties.

20. The Respondent in their submissions have denied having ever signed these two letters dated 30.05.2019 and 01.07.2019 and also mentioned that these are forged and fabricated letters. The Respondent has also denied the contents of the letters. Regarding

the cheques issued by the Respondent for an amount of Rs. 4,16,18,466/- and Rs. 7,76,706/-, the Respondent mentions that these were advance payments for future transactions and has nothing to do with any past payment to the Petitioner.

21. Before going further in the matter this Bench would like to reiterate the definition of Operational Debt as per Section 5(21) which reads as under: -

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

(Emphasis supplied).

22. Therefore, the Bench notes that the Petitioner has to disclose the type and details of the goods for which a debt has arisen and which is being claimed by the Petitioner. Since the Petitioner had not furnished any details for the provision of goods, this bench while hearing the matter on 27.02.2020, gave one last chance to the Petitioner to submit on affidavit enclosing all the invoices and proof of delivery of the material to the Respondent corresponding to the amount of debt which has been claimed in the Petition.

23. The Bench notes that on 03.03.2020, on affidavit the Petitioner produced 37 invoices which as per the Petitioner are due and payable by the Respondent. The Bench notes that in the additional affidavit filed by the Petitioner, the Petitioner has given a compilation by way of Exhibit 'O' recording the documents and transactions between the parties. The details regarding the 37 invoices raised on M/s. Supreme Engineering by the Petitioner as provided in the Additional Affidavit dated 03-03-2021, is as under:-

M/s G L ENGINEERING INDUSTRIES PVT. LTD
Statement of H S invoices raised on M/s Supreme Engineering Ltd (formerly Supreme Heatreater Pvt. Ltd.)

Sr. No	Our H S Invoice No.	Date	Invoice amt.	Import	Import inv. No.	Date	Currency	Amount	B/L No.	Bill of Entry No.	Page No.
1	HS/01 /2013-14	11/11/2013	2,695,545.00	Huangang Steel Ltd	INV 20130627	10/25/2013	USD	41,881.00	EURFL13R09227NSA	3922285	192-197
2	HS/02 /2013-14	1/18/2014	6,422,573.00	ABS Alloys & Metal	UK - R/11/13/1823	12/12/2013	USD	100,025.00	NA2459253	4729597	186-191
3	HS/03 /2013-14	3/15/2014	2,803,472.00	Saarstahl Export	4/1/0026T	2/23/2014	EURO	32,089.96	BRE0286039	5146459	179-185
4	HS/01 /2014-15	5/23/2014	792,136.00	Jaingsu Soho International	14WX 150001H	5/7/2014	USD	12,922.00	60756350862	5613994	174-178
5	HS/02 /2014-15	5/23/2014	383,900.00	Jaingsu Soho International	14WX 150002H	5/7/2014	USD	6,325.00	AMIGL140091439A	5676574	169-173
6	HS/03 /2014-15	8/23/2014	3,399,738.00	Kanematsu Trading	E0272565-4156	8/15/2014	JPY	5,630,196.00	NGNHV-412-001-141P	6693361	164-168
7	HS/04 /2014-15	9/6/2014	2,729,747.00	Haneda Koson Co. Ltd.	EL-2870	8/15/2014	USD	43,872.50	TEK 1405963	6845150	158-163
8	HS/05 /2014-15	9/19/2014	3,324,005.00	Saarstahl Export	4/1/00108K	8/28/2014	EURO	40,914.36	MSCURN775896	6898153	149-157
9	HS/06 /2014-15	9/22/2014	179,311.00	Kanematsu Trading	E0272565-4186	9/11/2014	JPY	308,412.00	NGNHV-036-003-141P	6978118	142-148
10	HS/07 /2014-15	9/22/2014	1,628,853.00	Kanematsu Trading	E0272565-4185	9/11/2014	JPY	2,801,604.00	NGNHV-414-001-141P	6978023	136-141

Sr. No	Our H S Invoice No.	Date	Invoice amt.	Import	Import inv. No.	Date	Currency	Amount	B/L No.	Bill of Entry No.	Page No.
11	HS/08 /2014-15	11/30/2014	1,535,218.10	Kanematsu Trading	E0283227-4254	11/21/2014	JPY	2,834,493.00	NGNHV-424-001-141P	7643259	132-135
12	HS/09 /2014-15	12/8/2014	1,625,555.44	Kanematsu Trading	E0283227-4263	11/27/2014	JPY	3,001,284.00	NGNHV-426-001-141P	7698035	127-131
13	HS/01 /2015-16	4/22/2015	3,513,535.48	Shenyang North	2015040203	4/2/2015	USD	53,529.80	AMIGL150085844A	9224311	122-126
14	HS/02 /2015-16	7/15/2015	1,187,703.00	Sunrise Metal Inc.	SMI/EX0317	6/12/2015	USD	18,163.20	RTM0659052	2016006	119-121
15	HS/03 /2015-16	7/15/2015	1,172,363.00	Sunrise Metal Inc.	SMI/EX0318	6/12/2015	USD	17,894.40	RTM0659052	2017366	115-118
16	HS/04 /2015-16	7/28/2015	2,861,711.00	Haneda Koson Co. Ltd.	EI-3012	6/23/2015	USD	43,769.00	KMUM-016	2154245	111-114
17	HS/05 /2015-16	8/28/2015	2,929,039.00	Haneda Koson Co. Ltd.	EI-3012-2	7/31/2015	USD	43,674.62	KMUM-009	2557262	108-110
18	HS/06 /2015-16	11/4/2015	2,948,859.00	Haneda Koson Co. Ltd.	EI-3012-3	10/15/2015	USD	43,671.27	KMUM-004	3368256	105-107
19	HS/07 /2015-16	2/3/2016	1,896,482.00	Haneda Koson Co. Ltd.	EI-3117	1/22/2016	USD	27,103.44	KMUM16MH012	4374627	101-104
20	HS/08 /2015-16	2/8/2016	2,579,580.00	Sandvik Heating Tech	1010700 & 1010701	1/5/2016	USD	23,520.00 13,158.75	GOTS16074545	4438790	92-100

Sr. No	Our H S Invoice No.	Date	Invoice amt.	Import	Import inv. No.	Date	Currency	Amount	B/L No.	Bill of Entry No.	Page No.
21	HS/09 /2015-16	2/15/2016	746,875.00	Ireland Alloys Ltd.	100621	11/23/2015	STG POUND	7,400.00	BE1600167	4438734	88-91
22	HS/10 /2015-16	2/25/2016	956,169.00	Taiyo Metal Co. Ltd.	TMGL 0001-1	12/15/2015	USD	13,785.60	OSA/NAN/08298	4753935	83-87
23	HS/11 /2015-16	3/21/2016	2,812,754.00	Haneda Koson Co. Ltd.	EI-3140	2/26/2016	USD	40,883.64	KMUM26MH025	4796316	79-82
24	HS/01 /2016-17	4/10/2016	2,399,312.00	Haneda Koson Co. Ltd.	EI-3146	3/23/2016	USD	35,160.93	KMUM36MH020	5307528	75-78
25	HS/02 /2016-17	5/10/2016	1,844,366.00	Gemcor International	16022902-1	3/16/2016	USD	26,927.81	MSCUU5893610	5374704	63-68
26	HS/03 /2016-17	5/10/2016	3,078,723.00	Gemcor International	16022902-2	3/16/2016	USD	44,949.45	MSCUU5914978	5374668	69-74
27	HS/04 /2016-17	5/10/2016	1,122,035.00	Dangbei Special Steel	AZ1604001 A073HK	4/13/2016	USD	16,381.75	NVA-2260625	5393322	59-62
28	HS/05 /2016-17	7/1/2016	2,953,576.00	Sandvik Heating Tech	1012349 & 1012350	5/27/2016	USD	15,732.00 26,726.40	GOTS16087141	6116503	49-58
29	HS/06 /2016-17	7/10/2016	1,135,086.00	Shenzhen One Touch	1604088	5/28/2016	USD	16,317.15	8D16060264	6130095	45-48
30	HS/07 /2016-17	8/22/2016	4,026,755.00	Haneda Koson Co. Ltd.	EI-3225	8/3/2016	USD	58,270.10	KMUM76MH012	6663676	40-44

Sr. No	Our HS Invoice No.	Date	Invoice amt.	Import	Import inv. No.	Date	Currency	Amount	B/L No.	Bill of Entry No.	Page No.
31	HS/08 /2016-17	9/19/2016	4,418,270.00	Sandvik Heating Tech	1012984 & 1012350	8/10/2016	USD	31,616.00 26,611.20	GOTS1609	6554517	32-33
32	HS/09 /2016-17	9/27/2016	1,045,930.00	Shenzhen One Touch	1347190-7	9/24/2016	USD	13,784.00	2.33E+10	6987883	27-31
33	HS/10 /2016-17	3/9/2016	2,411,240.00	Jiangsu One Touch	2.02E+08	1/16/2017	USD	31,824.00	6.18E+10	8921138	23-26
34	HS/01 /2017-18	4/1/2017	4,136,905.00	Haneda Koson Co. Ltd.	EI-3260	3/6/2017	USD	55,795.55	KMUM27M	9158168	20-22
35	HS/02 /2017-18	6/10/2017	5,301,089.00	Sandvik Heating Tech	1015571, 1015572 & 1015573	4/28/2017	USD	24,081.00 43,033.50 5,535.00	GOTS1711	2147508	12-19
36	GLSU/11/2017-18	1/23/2018	1,327,789.00	LOCAL SAL	-	-	-	-	-	-	10
37	GLSU/12/2017-18	1/23/2018	1,128,768.00	LOCAL SAL	-	-	-	-	-	-	9

24. The Bench notes that the compilation relates to 37 invoices commencing 11.11.2013 to 23.01.2018. The Respondent in reply dated 09.02.2021 has adequately demonstrated invoice-wise that full and complete payment has been made. Each of the invoices of the Petitioner was duly paid on time and thus there was no question of any interest for delayed payments.

25. The Petitioner has again filed an additional affidavit on 09.03.2020 where in addition to the sum corresponding 37 Invoices, it has added random heads of expenses such as late charges, khalapur expenses, travel charges, etc. However, none of these including the other debit note as mentioned in Exhibit '01' has any supporting invoices.

26. The Bench had gone through the additional affidavit enclosing debit note and invoices submitted by the Petitioner in support of debt due from the Respondent. It is very surprising to note that in the affidavit filed on 03.03.2020 annexing 37 Invoices from 11.11.2013 to 23.01.2018a total amount of Rs. 8,74,54,968.02/- has been shown as due. However, in the reply to the rejoinder furnished by the Respondent on 18.02.2021, it has been clearly demonstrated

that all the 37 invoices have been paid. The specific details of the payment of these invoices as provided by the Respondent in reply to the rejoinder dated 19-02-2021 and not denied by the Petitioner clearly shows that such payment has been made. The details of such payment made is as under:

ANNEXURE " 2. "

Sr. No.	Date	Invoice No.	Amount in Rs.	Credit Period	Interest	Date	Nature of Transaction	Voucher No.	Debit
1	11.11.2013	HS/01/2013-14	2695545	NIL	18	14-11-2013	Journal (LC Payment)	53	2622056.00
2	18.01.2014	HS/02/2013-14	6422573	NIL	18	21-01-2014	Bank Payment	BP-1020	148625.00
3	15.03.2014	HS/03/2013-14	2803472	NIL	18	03-04-2014	Journal (LC Payment)	4	4592374.00
4	23.05.2014	HS/01/2014-15	792136	NIL	NIL	11-04-2014	Journal (LC Payment)	6	1749862.00
5	23.05.2014	HS/02/2014-15	383900	NIL	NIL	13-05-2014	Journal (LC Payment)	14	776443.00
6	23.08.2014	HS/03/2014-15	3399738	NIL	NIL	26-05-2014	Bank Payment	BP-221	350000.00
7	06.09.2014	HS/04/2014-15	2729747	NIL	NIL	05-08-2014	Journal (BP)	91	1457629.00
8	19.09.2014	HS/05/2014-15	3324005	NIL	NIL	13-08-2014	Journal (BP)	95	1417386.00
9	22.09.2014	HS/06/2014-15	179311	NIL	NIL	09-09-2014	Journal (BP)	118	3422965.00
10	22.09.2014	HS/07/2014-15	1628853	NIL	NIL	23-12-2014	Bank Payment	BP-1127	1500000.00
11	30.11.2014	HS/08/2014-15	1535218.1	NIL	NIL	24-12-2014	Bank Payment	BP-1132	1500000.00
12	08.12.2014	HS/09/2014-15	1625555.44	NIL	NIL	10-03-2015	Journal (BP)	256	3236459.00
13	22.04.2015	HS/01/2015-16	3513535.48	NIL	18	20-05-2015	Bank Payment	BP-200	1500000.00
14	15.07.2015	HS/02/2015-16	1187703	NIL	18	10-06-2015	Journal (LC Payment)	9	1580935.44
15	15.07.2015	HS/03/2015-16	1172363	NIL	18	08-09-2015	Cheque Payment	696	10700000.00
16	28.07.2015	HS/04/2015-16	2861711	NIL	NIL	06-11-2015	Cheque Payment	954	2500000.00
17	28.08.2015	HS/05/2015-16	2929039	NIL	NIL	01-12-2015	Cheque Payment	1037	10990000.00
18	04.11.2015	HS/06/2015-16	2948859	NIL	NIL	21-03-2016	Cheque Payment	1515	3007.00
19	03.02.2016	HS/07/2015-16	1896482	NIL	NIL	14-06-2016	Cheque Payment	457	3000000.00
20	08.02.2016	HS/08/2015-16	2579580	NIL	NIL	21-07-2016	Cheque Payment	702	3030000.00
21	15.02.2016	HS/09/2015-16	746875	NIL	NIL	11-01-2017	Cheque Payment	1737	1000000.00
22	25.02.2016	HS/10/2015-16	956169	NIL	NIL	12-01-2017	Bank Payment	BP-1301	1400000.56
23	21.03.2016	HS/11/2015-16	2812754	NIL	NIL	22-02-2017	Cheque Payment	2053	2800000.00
24	10.04.2016	HS/01/2016-17	2399312	NIL	NIL	17-03-2017	Cheque Payment	2284	2000000.00
25	10.05.2016	HS/02/2016-17	1844366	NIL	NIL	10-04-2017	Bank Payment	BP-25	3300000.00
26	10.05.2016	HS/03/2016-17	3078723	NIL	NIL	13-04-2017	Cheque Payment	138	1000000.00
27	10.05.2016	HS/04/2016-17	1122035	NIL	NIL	25-05-2017	Cheque Payment	422	1000000.00
28	01.07.2016	HS/05/2016-17	2953576	NIL	NIL	05-06-2017	Journal (BP)	35	2888137.00
29	10.07.2016	HS/06/2016-17	1135086	NIL	NIL	20-06-2017	Journal (BP)	57	1020473.00
30	22.08.2016	HS/07/2016-17	4026755	NIL	NIL	20-06-2017	Journal (BP)	58	2357168.00
31	19.09.2016	HS/08/2016-17	4418270	NIL	NIL	03-08-2017	Cheque Payment	1031	3800000.00
32	27.09.2016	HS/09/2016-17	1045930	NIL	NIL	28-08-2017	Cheque Payment	1176	3800000.00
33	09.03.2017	HS/10/2016-17	2411240	365	NIL	17-10-2017	Cheque Payment	1642	4000000.00
34	01.04.2017	HS/01/2017-18	4136905	NIL	NIL	05-01-2019	Bank Payment		5000000.00
35	10.06.2017	HS/02/2017-18	5301089	NIL	NIL	05-01-2019	Bank Payment		5000000.00
36	23.01.2018	GLSU/11/2017-18	1327789	NIL	NIL				
37	23.01.2018	GLSU/12/2017-18	1128768	NIL	18%				
Total			87454968.02				Total		95093520.00

27. In fact, from the above running account it has been demonstrated by the Respondent that against a payment due of about Rs.8,74,54,968.02/- they have made in the running account as on 23.01.2018 i.e., the date on which the last of the 37 vouchers were paid, a total payment of Rs. 9,50,93,520/- which is over and above the payment to the Petitioner against the 37 vouchers. The Bench also notes this fact that the Rs.9,50,93,520/- have been made has not been denied by the Petitioner.

28. The Petitioner has also submitted the Ledger of the Respondent appearing in the books of accounts of Petitioner vide their affidavit dated 09.03.2020. This ledger pertains to the period from 01.04.2013 to 31.03.2020. It can be seen that even as per the Petitioner up to 23.01.2018 all the dues has been fully and completely paid by the Respondent. Here the Bench notes that after 23.01.2018 all the entries made by the Petitioner are suspect for the simple reason that in the ledger account from 01.04.2017 to 31.03.2018 abruptly ends on 23.01.2018 where the debit balances the credit and no further entry either by way of debit or credit has been made. However, in the opening balance of 01.04.2018 a debit amount of Rs. 3,26,45,901.32/- abruptly appears for which no explanation has been given by the Petitioner. After that all the debit entries are journal entries passed by the Petitioner. These are evidently mere unilateral/adjustment entries passed by the Petitioner without there being any evidence like supporting invoices or any proof of delivery of goods or services to the Respondent or GST payments towards such transactions. A snapshot of ledger account of the Respondent as submitted by the Petitioner from 01.04.2017 to 31.03.2020 is as under:

G L ENGINEERING IND. PVT.LTD.				
Ledger				
From :01-Apr-2017 To :31-Mar-2018				
A/c of SUPREME HEATREATERS PVT LTD				
Date	Account Name	Doc No.	Debit	Credit
01/04/17	Opening Balance		3083897.32	
01/04/17	HIGH SEAS SALES BEING HS BILL NO 01/17-18 FOR 95377 KGS TO SUPREME HEAT	56	4138905.00	
10/04/17	ICICI BANK LTD.(LCA/C) BEING AMOUNT REC FROM SUPREME HEAT TREATERS			3300000.00
13/04/17	ICICI BANK LTD.(LCA/C) BEING RECEIVED FROM SUPREME HEATREATER			1000000.00
30/04/17	CHARGES FOR DELAYED PAYMENT BEING CHARGES FOR LC32	57	258923.00	
30/04/17	CHARGES FOR DELAYED PAYMENT BEING CHARGES FOR LC18	58	18474.00	
30/04/17	CHARGES FOR DELAYED PAYMENT BEING CHARGES FOR LC 31	59	240832.00	
30/04/17	CHARGES FOR DELAYED PAYMENT BEING CHARGES FOR LC14	60	503547.00	
30/04/17	CHARGES FOR DELAYED PAYMENT BEING CHARES FOR LC 14	61	74592.00	
30/04/17	CHARGES FOR DELAYED PAYMENT BEING CHARGES FOR LC13	62	825151.00	
30/04/17	CHARGES FOR DELAYED PAYMENT BEING CHARGES FOR LC 19	63	257084.00	
30/04/17	CHARGES FOR DELAYED PAYMENT BEING CHARGES FOR LC7	64	21182.00	
30/04/17	CHARGES FOR DELAYED PAYMENT BEING CHARGES FOR LC25	65	702368.00	
25/05/17	ICICI BANK LTD.(LCA/C) BEING AMOUNT REC FROM SUPREME HEATREATER			1000000.00
31/05/17	CHARGES FOR DELAYED PAYMENT BEING CHARGES FOR LC 30	66	69204.00	
31/05/17	CHARGES FOR DELAYED PAYMENT BEING CHARGES FOR LC 18	67	26929.00	
31/05/17	CHARGES FOR DELAYED PAYMENT BEING CHARGES FOR LC 15	68	874570.00	
31/05/17	CHARGES FOR DELAYED PAYMENT BEING CHARES FOR LC10	69	1166311.00	
31/05/17	CHARGES FOR DELAYED PAYMENT BEING CHARGES FOR LC 24	70	281808.00	
31/05/17	CHARGES FOR DELAYED PAYMENT BEING CHARGES FOR LC 26	71	949810.00	
31/05/17	CHARGES FOR DELAYED PAYMENT BEING CHARGES FOR LC29	72	7784.00	
31/05/17	CHARGES FOR DELAYED PAYMENT BEING CHARGES FOR LC28	73	165965.00	
05/06/17	ICICI BANK LTD.(LCA/C) BEING AMOUNT REC FROM SUPREME HEATREATER			2888137.00
10/06/17	HIGH SEAS SALES BEING HS BILL NO 02/17-18 FOR 7800KGS TO SUPREME HEAT	74	5301089.00	
20/06/17	ICICI BANK LTD.(LCA/C) BEING AMOUNT REC FROM SUPREME HEATREATER			2367188.00
20/06/17	ICICI BANK LTD.(LCA/C) BEING AMOUNT REC FROM SUPREME HEATREATER			1020473.00

G L ENGINEERING IND. PVT.LTD.
Ledger

From :01-Apr-2017 To :31-Mar-2018

27/06/17	ICICI BANK LTD.(LCA/C) BEING AMOUNT PAID TO SUPREME HEATREATER FOR LC NO 31		75	3371170.00	
28/06/17	CHARGES FOR DELAYED PAYMENT BEING CHARGES FOR LC 23		76	560902.00	
28/06/17	CHARGES FOR DELAYED PAYMENT BEING CHARGES FOR LC21		77	1627875.00	
28/06/17	CHARGES FOR DELAYED PAYMENT BEING CHARGES FOR LC22		78	347360.00	
29/06/17	CHARGES FOR DELAYED PAYMENT BEING FOR KHALAPUR EXP		79	235000.00	
29/06/17	CHARGES FOR DELAYED PAYMENT BEING RECD FOR VARIOUS LCS		80	186322.00	
30/06/17	CHARGES FOR DELAYED PAYMENT BEING RECD FOR LC 2 DIFF		81	26312.00	
30/06/17	CHARGES FOR DELAYED PAYMENT BEING CHARGES FOR LC 27		82	582080.00	
07/08/17	ICICI BANK LTD.(LCA/C) BEING AMOUNT REC FROM SUPREME HEATREATER				3800000.00
28/08/17	ICICI BANK LTD.(LCA/C) BEING REC FROM SUPREME HEATREATER				3800000.00
15/09/17	PURCHASE BEING 545 KGS MAT.FROM SUPREME VIDE BILLNO SL/1718/0117				12862.00
17/10/17	ICICI BANK LTD.(LCA/C) BEING AMOUNT REC FROM SUPREME HEATREATER PVT.LTD				4000000.00
23/01/18	SALES A/C BEING SALE OF 22550 KGS TO SUPREME B/N-11		83	1327789.00	
23/01/18	PURCHASE BEING 2985KGS FROM SUPREME B/N 306				257127.00
23/01/18	PURCHASE BEING 381 KGS FROM SUPREME B/N 307				100257.00
23/01/18	SALES A/C BEING 19170 KGS TO SUPREME B/N-12		84	1128788.00	
23/01/18	PURCHASE BEING 71 KGS FROM SUPREME B/N 308				1678.00
	Balance C/f				32645901.32
Totals :				56183801.32	56183801.32

G L ENGINEERING INDUSTRIES PVT. LTD.
SUPREME HEATREATER PVT LTD
Ledger Account

1-Apr-2018 to 31-Mar-2019

					Page 1	
Date	Particulars	Vch Type	Vch No.	Debit	Credit	
1-4-2018	To Opening Balance			3,26,45,901.32		
8-1-2019	By HDFC Bank SION	Receipt	67		50,00,000.00	
	By HDFC Bank SION	Receipt	68		50,00,000.00	
28-1-2019	To DELAYED PAYMENT CHARGES	Journal	91	1,15,19,465.00		
	By Closing Balance			4,41,85,366.32	1,00,00,000.00	
				4,41,85,366.32	4,41,85,366.32	

G L ENGINEERING INDUSTRIES PVT. LTD.
SUPREME ENGINEERING LTD
Ledger Account

1-Apr-2019 to 31-Mar-2020

Date	Particulars	Vch Type	Vch No.	Debit	Page 1 Credit
1-4-2019	To Opening Balance			3,41,65,368.32	
15-5-2019	To DELAYED PAYMENT CHARGES	Journal	43	75,29,365.00	
20-5-2019	By DELAYED PAYMENT CHARGES	Journal	49		12,41,343.32
	To DELAYED PAYMENT CHARGES	Journal	50	11,65,058.00	
				4,28,59,809.32	12,41,343.32
	By Closing Balance				4,16,18,488.00
				4,28,59,809.32	4,28,59,809.32

It can be seen from the above that these type of journal entries does not support the case of the Petitioner to claim such amounts where unilateral adjustment entries are passed. In other words these are neither any sale or bank receipt entries and hence said claims of the Petitioner lacks merit.

29. The Bench further notes that for this additional amount which has been claimed by the Petitioner by way of random expenses like delay charges, khalapur expenses and travel charges, no supporting invoices have been produced. In fact, the Bench further notes that the claims regarding the delay charges, khalapur expenses, travel charges etc. has no documentary evidence regarding any agreement between the parties. The Bench also notes that the 37 invoices referred to by the Petitioner do not mention any payment terms. Only in 7 invoices an interest at 18% p.a. has been mentioned. Similarly, in none of these 37 invoices, barring one, any proof of payable amount on account of delayed payment has been mentioned. Only one invoice mentions in its terms a delay of 365 days.

30. The Bench takes note that this applicable rate of 2.25% as claimed by the Petitioner has never been a part of any of the invoices and it has been mentioned by the Petitioner only while drawing a summary table without any proof. Therefore, the Bench finds that all these charges like delayed charges, khalapur expenses, travel charges, for which no invoices have been raised are baseless claims, not based on any mutual agreement or any documentary proof.

31. This Bench, therefore, concludes that there is nothing on record which shows that any outstanding Operational Debt as a claim in respect of provision 'supply of goods or services' by way of invoices or any documents has been proved by the Petitioner. In fact, all the 37 invoices which have been put on record by the Petitioner as due from the respondent has been fully paid and are not outstanding. The additional claim amount raised by way of other charges is frivolous, unsubstantiated, not based on any documentary proof and not even any invoices to that effect has been raised from the Petitioner. Further any claim arising out of Journal entries are unilateral adjustment claims and by no stretch of imagination can be said to be a claim arising out of supply of goods and services.

32. Regarding the two confirmatory letters from the Respondent i.e., 30.05.2019 and 01.07.2019 the Respondent has mentioned that it is a forged and fabricated document which has not been signed by them and its contents are also denied as false and baseless. The contention of the Respondent in light of the above that it had issued those two cheques of about Rs.4.16 crores and about Rs.7.76 lakhs was only as security keeping in mind the business relationship between the parties, appears to be tenable. In any case, the dishonor of the cheques is a subject matter of Negotiable Instruments Act, 1881 and only proves that the Respondent is not interested in paying any 'security deposit' to the Petitioner. The

Bench is of the view that it does not relate to any outstanding amount due from the Respondent by way of any operational debt.

33. In view of the above the Petition CP (IB)424/MB/2020 is **"Dismissed"**.

34. The Registry is directed to communicate this order to both the parties.

SD/-

**Chandra Bhan Singh
Member (Technical)**

SD/-

**Suchitra Kanuparthi
Member (Judicial)**

National Company Law Appellate Tribunal

Principal Bench, New Delhi

COMPANY APPEAL (AT) (INSOLVENCY) No. 431 of 2021

(Arising out of Order dated 06th May, 2021 passed by National Company Law Tribunal, Mumbai Bench, Court-V, in C.P. (IB) 424/MB/2020).

IN THE MATTER OF:

**M/s. G.L. Engineering Industries Pvt. Ltd.
Regd. Office: 39/44, TV Chidambaram Road,
Sion (East), Mumbai – 400022.
CIN No. U28920MH1981PTC023662**

...Appellant

Versus

**Supreme Engineering Ltd.
R-223, M.I.D.C. Complex,
Rabale, Thane Belapur Road,
Navi Mumbai – 400701.
CIN No. L99999MH1987PLC043205**

...Respondent

For Appellant: Mr. Abhijeet Sinha, Ms. Neeha Nagpal and Mr. Udbhav Nanda, Advocates.

For Respondent: Ms. Meenakshi Arora, Sr. Advocate alongwith Mr. Mohit D. Ram, Ms. Aditi Hambarde, Mr. Vipul Patel, Advocates.

J U D G E M E N T

[Per; Shreesha Merla, Member (T)]

1. Challenge in this present Appeal is against the Impugned Order dated 06/05/2021 passed by the Learned Adjudicating Authority (National Company Law Tribunal, Mumbai Bench, Court-V) in C.P. (IB) 424/MB/2020, wherein the Adjudicating Authority has dismissed the Application filed by the Appellant under Section 9 of the Insolvency and Bankruptcy Code, 2016, (hereinafter referred to as 'the Code') observing as follows:

“29. The Bench further notes that for this additional amount which has been claimed by the Petitioner by way of random expenses like delay charges, khalapur expenses and travel charges, no supporting invoices have been produced. In fact, the Bench further notes that the claims regarding the delay charges, khalapur expenses, travel charges etc. has no documentary evidence regarding any agreement between the parties. The Bench also notes that the 37 invoices referred to by the Petitioner do not mention any payment terms. Only in 7 invoices an interest at 18% p.a. has been mentioned. Similarly, in none of these 37 invoices, barring one, any proof of payable amount on account of delayed payment has been mentioned. Only one invoice mentions in its terms a delay of 365 days.

30. The Bench takes note that this applicable rate of 2.25% as claimed by the Petitioner has never been a part of any of the invoices and it has been mentioned by the Petitioner only while drawing a summary table without any proof. Therefore, the Bench finds that all these charges like delayed charges, khalapur expenses, travel charges, for which no invoices have been raised are baseless claims, not based on any mutual agreement or any documentary proof.

31. This Bench, therefore, concludes that there is nothing on record which shows that any outstanding Operational Debt as a claim in respect of provision ‘supply of goods or services’ by way of invoices or any documents has been proved by the Petitioner. In fact, all the 37 invoices which have been put on record by the Petitioner as due from the respondent has been fully paid and are not outstanding. The additional claim amount raised by way of other charges is frivolous, unsubstantiated, not based on any documentary proof and not even any invoices to that effect has been raised from the Petitioner. Further any claim arising out of Journal entries are unilateral adjustment claims and by no stretch of imagination can be said to be a claim arising out of supply of goods and services.

32. Regarding the two confirmatory letters from the Respondent i.e., 30.05.2019 and 01.07.2019 the Respondent has mentioned that it is a forged and fabricated document which has not been signed by them and its contents are also denied as false and

baseless. The contention of the Respondent in light of the above that it had issued those two cheques of about Rs.4.16 crores and about Rs.7.76 lakhs was only as security keeping in mind the business relationship between the parties, appears to be tenable. In any case, the dishonor of the cheques is a subject matter of Negotiable Instruments Act, 1881 and only proves that the Respondent is not interested in paying any 'security deposit' to the Petitioner. The Bench is of the view that it does not relate to any outstanding amount due from the Respondent by way of any operational debt."

2. Submissions of the Learned Counsel appearing on behalf of the

Appellant:

- Learned Counsel for the Appellant submitted that the Appellant Company has supplied steel material to the Respondent both on high-sea sale basis and domestic since October, 2013 and payments were made according to mutually agreed terms which is payment against delivery including delayed payment charges, if any.
- As against the last sale invoice dated 23/01/2018 for Rs.3,26,45,901.32/-, the Respondent made a payment of Rs.1 Crore after one year in January, 2019.
- During the period 13/02/2018 to 24/11/2018, the Respondent Company issued several cheques, but requested the Appellant not to deposit any of them. As the date of three months had lapsed, the cheques were returned and fresh cheques were issued by the Respondent Company.
- Vide letter dated 15/05/2019, the Respondent confirmed a liability of Rs.4 Crores in favour of the Appellant with a condition that in case the deposit of the cheque is requested to be delayed, the Respondent

would pay interest at 1.92% per month till the date of realisation. A cheque no. 255124 dated 16/05/2019 for an amount of Rs.4 Crores was issued.

- Again, vide letter dated 30/05/2019, the Respondent confirmed that a payment of Rs.4,16,18,466/- was payable in favour of the Appellant and another cheque dated 30/06/2019 was issued for this amount. But on 01/07/2019, extension of time was requested by the Respondent till 31/07/2019 and a cheque of Rs.7,76,706/- was issued towards delayed payment charges and 1.92% penalty interest per month.
- Subsequent to deposit of the cheques, both the cheques of Rs.4,16,18,466/- and Rs.7,76,706/- were dishonoured on the ground of insufficient ones. The Appellant issued a Notice under Section 138 of the Negotiable Instrument Act, 1881 (hereinafter referred to as 'NI Act'), but there was no response.
- The Appellant got issued a Section 8 Notice under the Code on 10/01/2020 for a debt amount of Rs.42,39,172/- as on 31/07/2019 along with delayed payment charges at 1.92% up to 31/12/2019.
- In response to the Section 8 Notice, the Respondent raise baseless allegations, stating that the letter dated 30/05/2019 and 01/07/2019 were forged. Learned Adjudicating Authority dismissed the Application on the ground that the letters dated 30/05/2019 and 01/07/2019 were fabricated. Learned Counsel relied on the Judgement of the Hon'ble Supreme Court in '*APS Forex Services Private Limited*' Vs. '*Shakti International Fashion Linkers and Ors.*', (2020) 12 SCC 724, in

which the Hon'ble Apex Court has observed that *'once a person admits the issuance of cheque bearing his/her signature, there is presumption of a legally enforceable debt, which is rebuttal in nature but would require leading evidence for rebuttal'*.

- The Appellant filed two Forensic Reports pertaining to the subject letters. The Respondent had consistently accepted the liability to make the payment from 13/02/2018 onwards. To buttress his argument, the Learned Counsel has placed reliance on the following Principles:
 - *'M/s. Global Infonet Distribution Pvt. Ltd. Vs. M/s. Tespa Infotech Pvt. Ltd., Company Appeal (AT) (Insolvency) No. 185 of 2019, in which it was held that '....such dispute could not have been decided by the Adjudicating Authority nor can be decided by this Appellate Tribunal as to whether the documents were fictitious or is of earlier period which can be decided only by the forum of competent Jurisdiction'*.
 - Para 18 of *'A2 Interiors Products Pvt. Ltd.' Vs. 'Ahluwalia Contracts India Ltd.'*, C.P. (IB) No. 2135/ND/2019 also stipulates that *'Admission of the 'Operational Debt' leaves no scope for further adjudication'*.
 - This Tribunal in *'Duke Sponge & Iron' Vs. 'Laxmi Foils & Ors.'*, *Company Appeal (AT) (Insolvency) No. 950 of 2019*, has observed that *'the aggrieved party has option to move appropriate civil/criminal forums and in case it is established that in any appropriate proceeding the document was falsified, forged or fabricated'*.

- Invoices are not necessary to establish an 'Operational Debt' in terms of Form 3 of Rule 5 of IBBI (Application to the Adjudicating Authority) Rules, 2016, specifically in view of the fact that clear admission of liability exists. This Tribunal in '*Neeraj Jain*' Vs. '*Cloudwalker Streaming Technologies Private Limited & Ors.*', *Company Appeal (AT) (Insolvency) 1354 of 2019*, has clarified that '*for filing Application under Section 9 of the Code, in case the Demand Notice would deliver in Form 3 of IBBI (Application to the Adjudicating Authority), Rules, 2016, within the submissions of the copy of the charges along with the Application in Form 5 is not a mandatory requirement, providing the documents to prove the existence of 'Operational Debt' and the amount in default is attached with the Application*'.
- The endorsement of the dishonoured cheques mentioned 'exceeds arrangement' but did not relate to forged signatures. This Tribunal in '*Sudhi Sachdev*' Vs. '*APPL Industries Ltd.*', *Company Appeal (AT) (Insolvency) No. 623 of 2018* has held that '*pendency of case under Section 138/141 of the NI Act amounts to Admission of debt and not an 'existence of dispute'*'.
- There is sufficient evidence on record to prove that the 'Operational Debt' is due in terms of detailed 37 invoices pertaining to high sea-sale, Statement of Debit Notes to the delayed payments, Ledger Accounts of the Respondent showing a Closing Balance of Rs.4,16,18,466/- along with a signed and stamp Statement of Account as on 30/06/2019 and therefore the Adjudicating Authority has erroneously dismissed the Application filed under Section 9 of the

Code on the ground that there was no evidence of any services rendered or amounts 'due and payable'.

3. Submissions of the Learned Counsel appearing on behalf of the

Respondent:

- Learned Counsel for the Respondent contended that the letters dated 30/05/2019 and 01/07/2019 are forged and fabricated and the Respondent has filed two Affidavits dated 14/02/2020 and 17/02/2021 stating that the contents of the aforesaid letter are false and fabricated.
- The Appellant has relied on two cheques issued by the Respondent for Rs.4.16 Crores and Rs.7.76 Lakhs which the Respondent had actually issued only as a security to the Appellant, keeping in view the old business relations between the parties, but not towards any specific payment. The Appellant has approached this Tribunal only on the basis of such dishonoured cheques and false claims in respect of the alleged 'Operational Debt'.
- The Appellant never produced the invoice against which the amount was 'due and payable'. The Learned Counsel placed reliance on the deposition made in the Affidavit dated 14/02/2020, which is detailed as hereunder:

"5. ... I state that neither the pleadings of the Appellant has made out a cause of action nor is there a single document annexed to the Petition supporting the purported allegations and claims as required u/s. 8 of the IBC. I say that the Appellant has failed and neglected to provide any invoice due for payment as is mandated u/s. 8 of the IBC.

6. ...I say that, without prejudice, and assuming without admitting that the claim is for an operational debt, the definition of the term "Operational Debt" required a claim in respect of provisions of goods or services including employment or a debt in respect of the payment of dues arising under any law for the time being in force and payable to the Central Government, any State Government or any local authority." I state that the Appellant has failed to disclose the type and details of the goods in terms of date/s on which these purported transactions took place, quantities, amounts, Purchase Orders, Contracts, Invoices, Delivery Challans and/or Receipts. It is pertinent to note that the Appellant has used the term "oral orders" and usual "business practice" in order to conceal the fact that there were actually no transactions for provision of goods. The Appellant has failed in its legal obligation to provide any such details as mandated u/s. 8 of the IBC. It is further pertinent to note that the Appellant failed to produce the aforesaid documents even at the time of inspection held on 19th December, 2019 at 12 pm citing that the same are only "supplementary" as specifically stated in the letter dated 20th December, 2019 annexed as Exhibit K to the Petition. I say that in the absence of any such proof of transactions, the said claim of the Appellant is merely an extortion based on false and fabricated letters, after forging my signature and thus the present Petition deserved to be dismissed in the limine with costs. I state that in view of the absence of details of the purported transactions including any documents to substantiate such transactions the issue of limitation under law arises. In the absence of relevant dates, amounts and quantity, I am not aware and deny of any/all transactions having taken place in the past three years for which any sums are due and thereby deny the legal validity and locus of this present Petition."

- On 27/02/2020, the Adjudicating Authority gave one more opportunity to the Appellant, 'to submit an Affidavit enclosing all the invoices and proof of delivery of the material to the other side corresponding to the amount of debt which is mentioned in their Petition'. On 03/03/2020, the Appellant produced 37 invoices and also

filed an 'Additional Affidavit' on 09/03/2020 annexing a Ledger Account, which clearly evidences that the payment sought against the invoices submitted by the Appellant has already been paid. Hence, no amount was 'due and payable'.

- As against 37 invoices was referred to, the Respondent paid sum of Rs.9,50,93,520/- by three modes of payment such as NEFT, Cheque, Letters of Credit vide 37 entries as is evidenced in the chart 'Annexure-2'. An additional sum of Rs.1,16,87,154/- was also paid to the Appellant advance towards future Orders.
- Learned Counsel submitted that in that Affidavit dated 17/02/2021, the Respondent denied that interest at 2.25% per month was ever agreed to be paid.
- It is vehemently argued that each and every invoice raised in the Affidavit dated 03/03/2020 has already been paid and the Respondent has deposed so in their Affidavit dated 17/02/2021. The Appellant has produced a Forensic Report without the permission of the Court, which amounts to producing a manipulated report. The Appellant has failed to prove the existence of any valid debt and hence, the Adjudicating Authority has rightly concluded that there is nothing on record which shows that any outstanding 'Operational Debt' as a claim in respect of provision, of 'supply of goods and services' by way of invoices or any documents has been proved by the Appellant herein.

Analysis:

4. The main point which arises for consideration in this Appeal is whether the Appellant has filed sufficient documents to establish whether the amounts claimed in Part IV of Form 5 of the Application, are 'due and payable'. It is the main case of the Appellant that there is 'acknowledgement of debt' by the Respondent Company by way of letters dated 15/05/2019, 30/05/2019 and 01/07/2019 acknowledging a liability of Rs.4,16,18,466/- and Rs.7,76,706/-. The Respondent Company has filed two Affidavits denying the signatures on these letters and strenuously contended that they are forged and fabricated. We find force in the contention of the Learned Counsel for the Respondent Company that the Forensic Report filed by the Appellant herein has been obtained by them without taking the permission of the Adjudicating Authority. It is the case of the Appellant that the Respondent Company has taken different stands i.e., in their Reply to the Demand Notice dated 14/11/2019, the Respondent has submitted that the amount claimed is a 'Security Deposit' and pertains to the Leave and License Agreement. But in their Rejoinder to the Reply dated 08/01/2020, they have denied the same. The Respondent also denies that there was any supply of goods and services between the Appellant and the Respondent.

5. At this juncture, we find it relevant to reproduce Sections 5(20) & 5(21) of the Code as hereunder:

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

5(21) “operational debt” means a claim in respect of the provision of goods or services including

employment or a debt in respect of the [payment] of dues arising under any law for the time being in force and payable to the Central Government, any State Government or any local authority;

6. Learned Counsel for the Appellant placed reliance on the Ledger Account and drew our attention to the entry dated 23/01/2018 in which an amount of Rs.3,26,45,901.32/- was squared off. Further, he also drew our attention to the Ledger Account dated 01/04/2018 to 31/03/2019 wherein the delayed payment charges of Rs.1,15,19,455/- is noted. It is also the case of the Appellant that these letters were denied *after* the filing of the Section 9 Application but not when the Demand Notice under Section 8 of the Code was sent. It is the case of the Respondent that even in the communication dated 14/11/2019, it was clearly stated that the amount was towards the Security Deposit of the Leave and License Agreement and denied that they have ever agreed to pay the delayed payment charges of Rs.7,76,706/-. Vide letter dated 04/12/2019, the Appellant denies that any such Leave and License Agreement has ever been executed between the parties and further submits that the alleged Leave and License Agreement has no nexus whatsoever to the unequivocal confirmation and admission during by the client for the payment of Rs.42,39,517/-. A perusal of the material on record shows that the Respondent vide letter dated 08/01/2020 (Annexure A-8) has sought for the original invoices and the Statement of Account based on which the claim was made, but the Appellant has not furnished the same. The Statement of Account filed before the Adjudicating Authority demonstrates that it is a running account from 23/01/2018 and it can be seen from the records that up to 23/01/2018 all the dues have been fully

paid and the Ledger Account ends on 23/01/2018. However, in the Opening Balance on 01/04/2018 a debit amount of Rs.3,26,45,901.32/- appears in the absence of any invoices or any other additional documents to substantiate the argument of the Appellant that it is an 'Operational Debt' and the dues are 'Operational dues'.

7. We are of the earnest view that mere acknowledgement of amount in these two letters (even though denied by the Respondent), does not amount to *establishing* an 'Operational Debt' as defined under Section 5(21) of the Code. Annexures 1 & 2 are the Statements of Account filed by the Respondent Company in support of their case that out of the 37 invoices raised by the Appellant amounting to Rs.8,74,54,968/-, the Respondent has paid a sum of Rs.9,50,93,520/-. The Statement shows that these amounts were paid by NEFT, by cheque payments and also vide Letters of Credit. Hence, we are of the considered view that the amounts pertaining to 37 invoices have been paid by the Respondent. The same amounts reflect in Part IV of Form 5 of the Application claiming Rs.4,16,48,466/-and Rs.7,76,706/-. The delayed payment charges sought to be paid by the Appellant are not supported by any Agreement executed between the parties, based on which the Appellant could have exercised their rights to claim these amounts towards delayed charges. The interest charged towards penalty does not find a mention in any of the 37 invoices which are on record. The Journal Entries not supported by any other additional evidence cannot be '*solely*' relied upon to prove that the amount claimed arises out of 'supply of goods and services' to fall within the ambit of the definition of 'Operational Debt' as defined under Section 5(21) of the Code. Further we

are inclined to observe that the dishonour of the two cheques is a subject matter of the NI Act, 1881 and recovery of those amounts under the NI Act, 1881 cannot be said to be paid towards the supply of goods and services, specifically in the light of the absence of any such Agreement or invoices to that effect.

8. The Appellant has already initiated steps under Section 138/141 of the NI Act, 1881 and submits that the ratio of '*Sudhi Sachdev*' (*Supra*) is applicable to the facts of this case, as it relates to 'Admission of debt' and '*not an existence of dispute*'. The issue in this case is not whether there is an 'Admission of debt' or 'existence of dispute' but whether in the absence of any sufficient evidence on record that the amounts claimed are '*in respect of the provision of goods and services including employment or a debt in respect of (payment) of dues arising under any law for the time being in force and payable to the Central Government, any State Government or any local authority*' as defined under Section 5(21) of the Code. Hence, we are of the view that the ratio of the Judgement of the Hon'ble Supreme Court in '*APS Forex Services Pvt. Ltd.*' (*Supra*) and the other Judgements relied upon by the Learned Counsel for the Appellant are not applicable to the facts of the attendant case, as we hold that mere Admission of any liability would not construe an 'Operational Debt' as envisaged under Section 5(21) of the Code. There is no sufficient evidence on record to prove that any kind of 'Operational Debt' is 'due and payable'. Therefore, we do not find any substantial grounds to interfere with the well-considered Order of the Adjudicating Authority.

9. For all the foregoing reasons this Appeal fails and is accordingly dismissed. No Order as to costs.

10. The Registry is directed to upload the Judgement on the website of this Tribunal and send the copy of this Judgement to the Learned Adjudicating Authority (National Company Law Tribunal, Mumbai Bench) forthwith.

[Justice Anant Bijay Singh]
Member (Judicial)

[Ms. Shreesha Merla]
Member (Technical)

NEW DELHI
02nd March, 2022

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