NATIONAL COMPANY LAW APPELLATE TRIBUNAL, NEW DELHI Company Appeal (AT) (Insolvency) No. 95 of 2020

IN THE MATTER OF:

R. S. Fuel Pvt. Ltd.

...Appellant

Vs

Ankit Metal & Power Ltd.

....Respondent

Present:

For Appellant: Mr. Ramji Srinivasan, Sr. Advocate.
For Respondent: Mr. Abhijeet Sinha, Mr. Jeevan B. Panda, Mr. Satish Padhi, Ms. Meher Tandon and Mr. Saikat Sarkar, Advocates.

<u>order</u>

20.01.2020: Appellant – 'M/s R. S. Fuel (P) Ltd.' moved application under Section 9 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as 'I&B Code') for initiation of Corporate Insolvency Resolution Process against 'M/s Ankit Metal & Power Limited' (Corporate Debtor). The Adjudicating Authority (National Company Law Tribunal), Kolkata Bench, Kolkata by impugned order dated 21st November, 2019 dismissed the application on the ground of pre-existing dispute.

2. Learned counsel for the Appellant submits that Appellant has already accepted that that the amount is payable and referred to letter issued on behalf of the Corporate Debtor to the Advocate of the Appellant dated 22nd September, 2016.

3. Having gone through the aforesaid advocate's reply dated 22nd September, 2016, we find that there is a pre-existing dispute since August, 2016 relating to supply of coal which was not in accordance with the description in the purchase order. From the said letter it appears that legal notice was issued on behalf of the Appellant on 29th August, 2016, which the Advocate of Corporate Debtor replied in letter dated 22nd September, 2016, which is as follows:-

TYPED COPY

BIDYUT DUTT ADVOCATE, HIGH COURT CALCUTTA "TEMPLE CHANBERS" 6, OLD POST OFFICE STREET 3¹⁰ FLOOR, ROOM NO. 79/2 KOLKATA - 700 001 Phone : Office : 2210-3662

To Vikash Kumar Bhuwania Advocate, Bhuwania and Associates Kendua, P O. Kusanda District – Dhanbad – 828116 Jharkhand

> Your Client : M/s. R. S. Fuels Private Limited having its office at Harmu Road, Ranchi – 834001, Jharkhand

My Client : Ankit Metal & Power Limited

Sub - Reply to the Legal Notice dated 29.08.2016 send by you as regards to disputed claims amounting to Rs. 11,74,37,063/for supply of coal

Dear Sir.

After deliberating with my client upon your notice, I have been instructed to give reply by my client. Ankit Power and Metal Limited against the irrational and false claims made in your legal notice. I hereby reply to your notice.

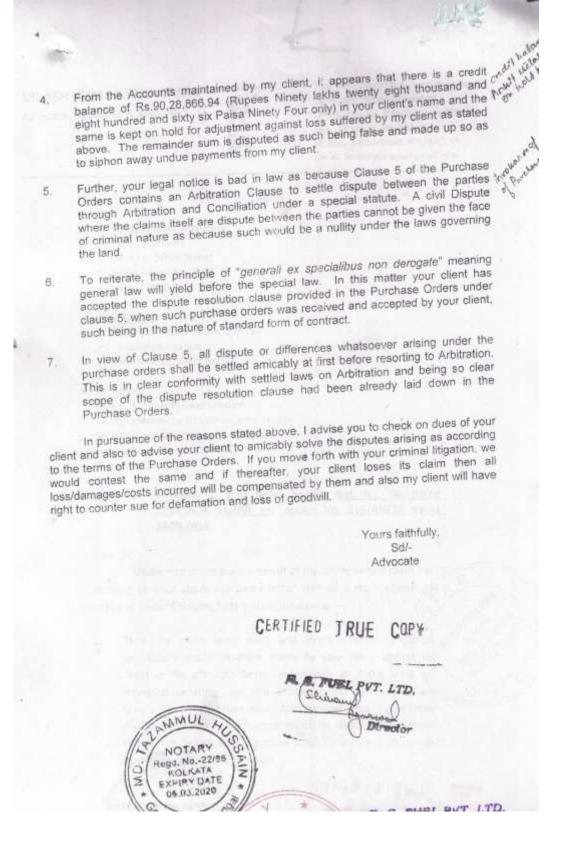
 The goods supplied by your client as against the purchase orders provided to them was not in accordance with product description as stated in the Purchase Orders. This was a clear violation and has caused much loss to my client.

2. Purchase orders had stated that delivery of coal would be immediate. My client was faced with the situation where immediate coal was required for upkeep of production but due to the delay in delivery from your end such caused immense hardship and loss of business for my client. The approach taken by your client in fulfilling its duties have been thoroughly unprofessional and insported.

3. The latches as provided before which is emanating from You diverse particulations of the supplied has led to production loss to my client. These derays and woorse doors supplied has led to production loss in bulks rendering be sequentized that is to raw materials and other supplies. My client has considered the service with the service of the

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4. Therefore, it is clear that much prior to issuance of demand notice, the disputes regarding the quality of goods/coal and delayed supply were continuing, such letter having already issued. We find that the letter of dispute was issued much prior to the issuance of demand notice under Section 8(1) issued on 30th September, 2017. The dispute was even before the commencement of Insolvency and Bankruptcy Code. What are the particulars of the goods, whether they were of substandard quality or delayed are not the matters which can be decided by the Adjudicating Authority (National Company Law Tribunal), therefore, such dispute cannot be decided and application under Section 9 cannot be entertained. The appeal is dismissed with aforesaid observations. No costs.

[Justice S. J. Mukhopadhaya] Chairperson

> [Justice Bansi Lal Bhat] Member (Judicial)

am/sk

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