

KOLKATA

Company Petition (IB) No. 154/KB/2022
And
Interlocutory Application (IB) No. 1209/KB/2023

Company Petition (IB) No. 154/KB/2022

*An Application 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:

Abdul Hannan

... Applicant/ Operational Creditor.

Versus

M/s. Jai Jute and Industries Limited

... Respondent/ Corporate Debtor.

And

Interlocutory Application (IB) No. 1209/KB/2023

*An Application under Rules 11 and 55 of the NCLT Rules,
2016.*

IN THE MATTER OF:

M/s. Jai Jute and Industries Limited

... Corporate Debtor.

Versus

Abdul Hannan

... Operational Creditor.

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And
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Date of Pronouncement: March 05, 2024.

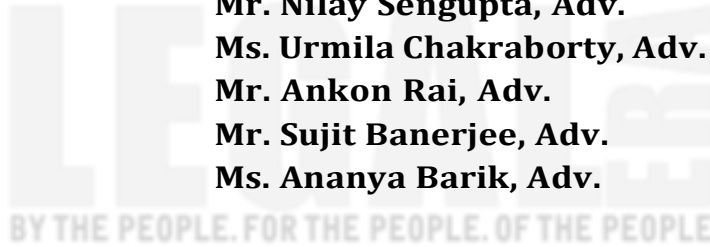
CORAM:

**SMT. BIDISHA BANERJEE, HON'BLE MEMBER (JUDICIAL)
SHRI. D. ARVIND, HON'BLE MEMBER (TECHNICAL)**

Appearance:

**For the Applicant: Mr. Rishav Banerjee, Adv.
 Mr. Patita Paban Bishwal, Adv.
 Ms. Suranjana Chatterjee, Adv.**

**For the Respondent: Mr. D. N. Sharma, Adv.
 Mr. Nilay Sengupta, Adv.
 Ms. Urmila Chakraborty, Adv.
 Mr. Ankon Rai, Adv.
 Mr. Sujit Banerjee, Adv.
 Ms. Ananya Barik, Adv.**



ORDER

Per Bidisha Banerjee, Member (Judicial)

- 1.** The Court congregated through hybrid mode.
- 2.** Heard the Learned Counsel, Mr. Rishav Banerjee appearing on behalf of the Applicant and Mr. D. N. Sharma, appearing on behalf of the Respondent.

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3. The instant application is filed under Section 9 of the Insolvency and Bankruptcy Code, 2016, for brevity "I&B Code" read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016, for brevity "AA Rules" by one **Abdul Hannan**, hereinafter referred to as "**Operational Creditor**" / "**Applicant**" against **M/s. Jai Jute and Industries Limited**, hereinafter referred to as "**Corporate Debtor**" / "**Respondent**" seeking for a direction to commence the Corporate Insolvency Resolution Process, for brevity "CIR Process" in respect the Corporate Debtor herein.
4. The total amount claimed to be in default is Rs. 2,16,17,430/- with an interest at the rate of 12% per annum till the final payment. The Debt fell due from 14.07.2017.

Facts in nutshell:

5. The Operational Creditor has supplied raw jute to the Corporate Debtors from time to time which was duly received by the Corporate Debtor. After certain payments made by the Corporate Debtor to the Operational Creditor, an outstanding amount of Rs. 2,16,17,430/- is due and payable by the Corporate Debtor.

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6. The Corporate Debtor issued a confirmation of account on April 01, 2020, where the Corporate Debtor confirmed the amount of Rs. 2,16,17,430/- payable to the Operational Creditor. The Copy of the Confirmation of account is annexed at Pages 37-38 to the application.
7. Demand Notice under Section 8 of the I&B Code read with Rule 5 of the AA Rules on 17.03.2022, to the Corporate Debtor which was delivered on 21.03.2021. Copy of the demand notice with annexures and speed post acknowledgment with the proof of services annexed at Pages 39-102 to the application.

The Learned Counsel for the Applicant would submit:

8. That, the Operational Creditor has supplied the raw jute and issued several bills for the same from 08.05.2017 to 14.07.2017, annexed at Pages 42-100 to the application which clearly evinces the claim by way of operational debt of the applicant.
9. That, after a plethora of follow up with the Corporate Debtor for the outstanding amount, some cheques were issued to the Operational Creditor. The said cheques were not deposited to the bank as the Corporate Debtor requested the Operational Creditor that there was no sufficient fund in the bank account

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of the Corporate Debtor. The copies of the cheques are annexed at Page 31-36 to the application.

The Learned Counsel for the Respondent would per contra submit as follows:

- 10.** That, much prior to the issuance of demand notice on 16.03.2022, a complaint, criminal in nature was lodged by the Corporate Debtor on 17.07.2017 at the Posta Police Station. It was alleged that the Operational Creditor, his close aide and representative Mr. Mehboob Hasan, has committed forgery, in as such as they have manufactured false documents, made short supply of raw jute and in conspiracy with the employees of the Corporate Debtor manufactured and fabricated satisfactory inspection reports about the inferior quality of raw jute. The Copy of the complaint dated 17.07.2017 before the Officer in Charge of Posta Thana is annexed at Page 17-21 to the Reply Affidavit.
- 11.** Thereafter, another complaint was lodged on 31.12.2017 at the same Police Station against the Operational Creditor and said Mr. Mehboob Hassan for threatening the Debtor of to life, property as well as damaging the reputation of the directors of Corporate Debtor for non-payment of instalment of December 2017. The copy of the complaint dated 31.12.2017 is annexed at Pages 26-29 to the Reply Affidavit.

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- 12.** The Learned Counsel for the Respondent takes through the receipts cum inspection reports indicating the short supply of goods, annexed to Pages 139-197 to the application.
- 13.** The Learned Counsel for the Respondent would submit that on 20.07.2017, a settlement agreement was made between the parties, annexed at Pages 22-25 to the Reply Affidavit, wherein the complaints of the Corporate Debtor concerning the quantity and quality of the goods supplied and fraudulent acts done by the Operational Creditor were admitted by the applicant. The Parties agreed to settle the dispute sans any further criminal/ civil proceedings for an amount of Rs. 66 Lakh to be paid in instalments within a period of one year from the date of execution of the date of settlement agreement, without levying of any interest.
- 14.** That, the payments under settlement agreement were made by way of NEFT/RTGS for an aggregate sum of Rs. 10.40 Lakh, which would be evidenced from the confirmation of account annexed at Pages 37 to the application and cash amount of Rs. 55.60 Lakh would be evidenced from the cash vouchers annexed at Pages 22-40 to the interlocutory application filed by the Corporate Debtor being I.A. (IB) No. 1209/KB/2023.

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- 15.** That, pursuant to the settlement agreement, the Post-dated cheques (PDCs) worth Rs. 66 Lakh was given as security to be retained till full payment is made under the settlement agreement dated 20.7.2017, which were never supposed to be presented and hence never presented nor encashed, as admitted by the Operational Creditor in its application.
- 16.** That, the Demand Notice is bad as amount claimed in Notice does not show the part payments made by the Corporate Debtor of an aggregated amount of Rs. 10.40 Lakh (Rs. 7 Lakh + 1 Lakh + 2 Lakh + 0.40 Lakh) between 22.05.2019 to 25.07.2019, would be evidenced from the confirmation of account annexed at Pages 37 to the application.
- 17.** Further, it is alleged that the bills, confirmation of accounts etc. are all fabricated and forged by the Operational Creditor. Raising of continuous bills to one party is unusual and cannot be accepted in ordinary course of business.
- 18.** It is alleged that the confirmation of accounts dated 01.04.2020 where the Corporate Debtor confirmed Rs. 2,16,17,430/- as payable to the Operational Creditor is forged by the Operational Creditor as stamp of Corporate Debtor is forged. It is claimed that the name of the Corporate Debtor is "JAI JUTE & INDUSTRIES LTD" whereas in the stamp it is written as "JAI JUTE AND INDUSTRY LTD". Further the

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purported signatures on behalf of Corporate Debtor, annexed at pages 37 and 38 to the application is signed by two different persons on two different dates, hence they are not convincing.

- 19.** Further, in the calculation sheet annexed at pages 103- 104 to the application, the total amount due as on 14.07.2017 is shown as Rs. 2,16,17,430/- after deducting Rs. 2,02,624/- from Rs. 2,18,20,054/-. The calculation sheet is contrary to Page 37 of the application as payments of Rs. 10,40,000/-, admittedly being received by Operational Creditor is not subtracted from the balance due, rather the calculation sheet shows that no payment has been received after 14.07.2017, which is in comprehensible.
- 20.** It is claimed that no designation or description of signing authority for the Corporate Debtor in the confirmation of accounts is given, annexed at Page 37 and 38 of the application.
- 21.** It is asserted that no confirmation of account could have been issued by the Corporate Debtor as its office and factory was closed from 13.07.2017 onwards.
- 22.** It is claimed that there is a mismatch in the bill amount apropos the calculation sheet and discount which the Corporate Debtor was entitled to as per bills has not been

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given in the calculation sheet. Further, in the bills there are no GST or VAT element.

- 23.** It would be submitted that under the settlement agreement, the Operational Creditor's claim can at best be Rs. 66 Lakh which is below the threshold limit under Section 4 of the I&B Code.

In Counter, the Learned Counsel for the Applicant would submit:

- 24.** That, the Settlement Agreement dated 20.07.2017 is forged and does not contain any stamp.
- 25.** That, the complaints dated 17.07.2017 and 31.12.2017 were lodged against the Corporate Debtor, however, neither any F.I.R has been registered nor any action taken by the concerned Police Authority.
- 26.** That, the issuance cheques and requesting not to present the same to the Bank, proves that there is an "operational debt", otherwise the cheques would have not been issued by the Corporate Debtor. Further, issuance of cheque is an acknowledgement of debt.
- 27.** That, the allegation of forgery and fabricated documents especially the balance Confirmation Statement dated

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01.04.2020 is simply an afterthought and moonshine defence solely to defeat the genuineness of the claim of the operational creditor herein and to create a mirage of a pre-existing dispute.

28. The discernible facts:

28.1. It would be evident that the Operational Creditor has supplied the raw jute and issued several bills of its service from 08.05.2017 to 14.07.2017.

28.2. The Complaint before the Posta Police Station against the Operational Creditor along with others was lodged on 17.07.2017 alleging forgery, manufactory of false documents, short supply of raw jute, conspiracy with the employees of the Corporate Debtor to manufacture and fabricate inspection reports, inferior quality of raw jute is a fact which cannot be denied by the Operational Creditor.

28.3. We have noted that the Complainant (Corporate Debtor) made allegation which would be apparent at Page 5 of the said complaint dated 17.07.2017 that:

“12. The alleged persons have successfully defrauded the Petitioner’s Company by supplying inferior quality of raw jutes. Further, the entire quantity of the raw jute has

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also not been supplied by the Abdul Hannan, whereas, he has claimed sums for the entire quantity of raw jute with specified quantity, as was demanded by the Petitioner' Company.'

“13. The undersigned has learned from reliable sources that the said Mehboob Hassan and Abdul Hannan used to pay handsome rewards to Mr. P.K. Dubey, Mr. Ramesh Chandra Sharma, for manufacturing the forged Jute Inspection Reports and for further allowing the criminal acts with their complete support to defraud the company.”

28.4. Further, it would be evident that the Settlement agreement dated 20.07.2017 made between the applicant and the respondent wherein both the parties agreed to and decided that the Corporate Debtor should pay the amount of Rs. 66 Lakh to the Operational Creditor in instalments within a period of a year from the execution of the settlement agreement sans any levy of interest, finds mention in case of the complaints lodged before police in the year of 2017. Therefore, existence of a settlement agreement cannot be denied as a fabricated document or an afterthought.

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28.5. The Corporate Debtor may have submitted the post-dated security cheques in favour of the Operational Creditor subject pursuant to the settlement agreement. Therefore, both the parties had agreed to execute the settlement agreement that the Corporate Debtor would withdraw its complaint dated 17.07.2017 against the Operational Creditor and would not proceed further, hence there was no further follow up of the complaint.

28.6. We would note that the second complaint was lodged on 31.12.2017 against the Operational Creditor by the Corporate Debtor alleging that:

“After intimating on 17th July 2017, the above noted persons visited the mill the company on 20th July 2017 and after series of discussions, negotiations, and inspection of records, the company and the above noted persons entered into a settlement agreement. In accordance with the amicable settlement between the company and the above noted persons. the Petition dated 17th July 2017 was duly withdrawn by the company.

Despite the fact that the mill of the company has been closed, the company has been arranging funds through its sources and regularly making payments

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to the above noted persons for payment of the entire Rs. 66,00,000/- (Rupees Sixty Six Lakh only).

However, since the Company could not arrange for any funds to pay in the month of December 2017, when Mehboob Hasan came to the mill of the company on or around 15th December 2017, the said Mehboob Hasan verbally humiliated the Petitioner and abused and cursed the Directors of the Company and demanded that payment be given to him. When the undersigned requested Mehboob Hasan to co-operate and give the company some time to release the payment, Mehboob Hasan warned the Petitioners and asked him not to delay the payments of the above noted persons, else the Petitioners as well as the directors of the company will have to pay heavy consequences.

As the above noted persons have strong hold in the nearby area due to the strong support of the local hooligans and vandalisers in the vicinity, the Petitioners duly informed the Directors of the company regarding the threats given by Mehboob Hasan. The Directors of the Company were so requested to talk to the above noted persons to

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resolve the dispute regarding payment of the instalment amount.”

29. In the backdrop of given facts the issues that fell for determination:

- (i) Whether a Police Complaint can be considered as pre-existing dispute.*
- (ii) Whether the issue relating to forgery and fabrication can be decided in a summary proceeding under I&B Code.*

Analysis and Findings:

30. Issue 1:

Whether a Police Complaint can be considered as pre-existing dispute.

30.1. During the course of argument, the Learned Counsel D. N. Sharma appearing on behalf of the Respondent, has drawn our attention towards the judgment passed by the Hon’ble NCLAT in *Sherbahadur D. Yadav Vs. M/s. Rohan Dyes and Intermediates Ltd.* in **Company Appeal (AT) (Ins) No. 472 of 2021** reported in **(2022) ibclaw.in 78 NCLAT** wherein **the Hon’ble NCLAT**, held that:

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“8. When the allegations against each other are serious allegations including allegations of offence against each other, we are not convinced by the Appellant that police complaint do not evidence any dispute between the parties. It is to be noted that all the aforesaid complaints are much before initiation of proceedings u/s 9 by the Appellant. The Adjudicating Authority has not committed any error in relying of the facts and materials on record to come to the conclusion that there was pre-existing dispute between the parties.”

“9. We are of the view that IBC proceedings are not for the purposes of adjudicating such dispute between the parties and are not the recovery proceedings to recover the unpaid amount by the official creditor whose claim is disputed by the ‘Corporate Debtor’.”

*“We, thus, do not find any error in the order of the Adjudicating Authority, **the appeal is dismissed.**”*

(Emphasis Added)

30.2. Further, we would refer the decision rendered by the Hon’ble NCLAT in *Mr. Anil J. Nemaavarkar vs. M/s.*

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Kumar Builders Mumbai Realty Pvt. Ltd. in Company Appeal (AT) (Insolvency) No. 330 of 2022 reported in (2022) ibclaw.in 270 NCLAT that:

*"5. We are not convinced with the submissions of the Learned Counsel for the Appellant that there was no dispute raised before the Demand Notice under Section 8 was issued by the Appellant. **Appellant himself has filed large number of complaints including Police Complaint and Complaint before the Labour Authority regarding his claim and making other serious allegations against the Corporate Debtor. We are of the view that Insolvency and Bankruptcy Code is not for resolving such dispute, the remedy of the Appellant with regard to his services benefits if any, lies elsewhere and Adjudicating Authority has rightly rejected the Application noticing the 'pre-existing dispute' between the parties.**"*

"The Appeal is dismissed."

(Emphasis Added)

30.3. In the case at hand, the Corporate Debtor made a complaint on 17.07.2017 before the Posta Police Station

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by alleging for supplying inferior quality of goods (raw jutes) by the Operational Creditor. However, the record has been placed before us that the said dispute was settled through a Settlement Agreement on 20.07.2017 and accordingly, the parties agreed not to proceed any further with respect the said police complaint. No evidence of withdrawal or closure of complaint is placed before us. The complaint being a fact and the allegations levelled therein being lodged in 2017, i.e., long prior to this company petition.

30.4. We can safely conclude that the Police Complaint, prior to the issuance of the statutory notice of demand under Section 8 of the I&B Code, prosecuting a dispute regarding the supply of inferior goods and/or service is a “pre-existing dispute”.

31. Issue 2:

Whether the issue relating to forgery and fabrication can be decided in a summary proceeding under I&B Code.

31.1. In this context, we would refer the decisions passed by the Hon’ble Apex Court and by the Hon’ble NCLAT, as under:

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31.2. Radha Exports (India) Pvt. Limited vs. K.P. Jayaram reported at **MANU/SC/0646/2020: (2020) 10 SCC 538**, wherein the Hon'ble Apex Court held that:

"16. Allegations of forgery and fraud are not decided in proceedings Under Sections 433 and 434 of the Companies Act 1956 for winding up of a company. Such disputes necessarily have to be adjudicated in a regular suit, on the basis of evidence, including forensic examination reports."

"17. By an order dated 4th August 2017 the NCLT dismissed the said winding up petition, on the ground that the Respondents had failed to comply with the provisions of Section 7(3)(b) of the Insolvency and Bankruptcy code, 2016, hereinafter "IBC", with the liberty to file a fresh petition, if so advised."

xxx

xxx

xxx

"40. There are, as observed above cogent records including letters signed by the Respondent Nos. 1 and 2 which evince that on 6th October, 2007, Respondent No. 2 resigned from the Board of the Appellant Company and at that time the Respondent No. 2 requested the Appellant Company to treat the share application money of Rs. 90,00,000/- as share application money of Mr. M. Krishnan and to

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*issue shares for aforesaid value to Mr. M. Krishnan. The amount was to be treated as a personal loan from the Respondent No. 2 to Mr. M. Krishnan. A personal Loan to a Promoter or a Director of a company cannot trigger the Corporate Resolution Process under the IBC. **Disputes as to whether the signatures of the Respondents are forged or whether records have been fabricated can be adjudicated upon evidence including forensic evidence in a regular suit and not in proceedings Under Section 7 of the IBC.***

(Emphasis Added)

31.3. *Jaginder Singh Lather v. AU Small Finance Bank Ltd.* reported at 2018 SCC OnLine NCLAT 706, the Hon'ble NCLAT held that:

*"3. In the present appeal this **Appellate Tribunal cannot decide issue such as whether the document produced by a party is forged and fabricated or not,** though it is always open to aggrieved person to file an application under Section 65 of the I & B Code with such allegation."*

(Emphasis Added)

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31.4. *Shelendra Kumar Sharma v. DSC Ltd.*, reported in 2019 SCC OnLine NCLAT 1274, it is laid down that:

“5. In view of such infirmity, we observe that the application was filed by the Appellant with an intent to receive the dues from the Corporate Debtor and not with intention for resolution or liquidation, therefore, we hold that the Adjudicating Authority rightly rejected the prayer of the Appellant. So far as the question as to whether the documents are forged or not is concerned, it cannot be determined by the Adjudicating Authority (National Company Law Tribunal) or this Appellate Tribunal and therefore, the Adjudicating Authority rightly not deliberated on such issue.”

(Emphasis Added)

31.5. *Satori Global Limited v. Shailja Krishna* reported at 2023 SCC OnLine NCLAT 249, the Hon’ble NCLAT has further held that:

“15. We are conscious of the fact that the ‘Gift Deed’ was not challenged which is of significance more so when the ‘title of Shares’ is relevant to decide the issue of the maintainability. At the cost of

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repetition, any dispute with respect to issues relating to 'fraud', 'manipulation', and 'coercion', and false statements cannot be decided in a summary jurisdiction. The contentions of the Learned Counsel for the Respondent that there is 'over writing on the certificates', signatures were taken on blank forms, there is mala fide suppression of some documents all require examination of evidence and hence cannot be decided by the NCLT in a summary fashion."

(Emphasis Added)

31.6. Further, the NCLT, New Delhi Bench in the case of ***Shri T.R. Arya v. Dilawari Motors Pvt. Ltd.*** reported in **(2024) ibclaw.in 44 NCLT** has held that:

"32. We are therefore of the considered view that the judgment passed by Hon'ble NCLAT in M/s. Satori Global Case (supra) will apply to the present case. This Tribunal is not empowered to adjudicate the issues relating to serious allegations of fraud and forgery."

(Emphasis Added)

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- 32.** From the judgments referred to above, we are of the view that in a summary proceeding under the I&B Code, the dispute relating to forgery and fabrication of document cannot be adjudicated by this Adjudicating Authority. To examine an application under Section 9 of the I&B Code, the Adjudicating Authority requires to determine whether there is an “operational debt” exceeding the threshold limit as prescribed, whether the documentary evidence furnished with the application substantiating the debt is due and payable and whether there is existence of a dispute between the parties before the receipt of the demand notice of the unpaid operational debt in relation to such dispute. **(Mobilox Innovations Private Limited vs. Kirusa Software Private Limited reported in (2018) 1 SCC 353)**
- 33.** In terms forgoing discussions, we are of the considered view that the plea of the Corporate Debtor regarding the dispute is not a moon shine defence and there are pre-existing disputes between the parties regarding the supply of goods.
- 34.** Accordingly, this Company Petition being **C.P. (IB) No. 154/KB/2022** is **dismissed**.
- 35.** Certified copies of this order, if applied for with the Registry of this Adjudicating Authority, be supplied to the parties upon compliance with all requisite formalities.

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36. This interlocutory application is filed under Rules 11 and 55 of the NCLT Rules, 2016 by the Corporate Debtor herein seeking the following reliefs:

- (a) Delay on the part of the Corporate Debtor to file the further reply affidavit in terms of the order dated June 12, 2023 in CP (IB) No.154/KB/2022 be condoned;*
- (b) Permit the Corporate Debtor/applicant to file the hard copy of the further reply affidavit in the Registry of this Hon'ble Tribunal to be kept with the records of C.P (IB) 154/KB/2022;*
- (c) To allow the Corporate Debtor to place reliance upon the further reply affidavit so filed in terms of prayers above at the time of hearing of the main Company Petition.*
- (d) Till disposal of the instant application, all further proceedings in C.P (IB) No.154/KB/2022 be stayed;*
- (e) Pass such further order or orders as this Hon'ble Tribunal may deem fit and proper;*

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37. We have noted that on 13.01.2023, this Bench allowed the time to file the reply affidavit by one week, upon the payment of cost of Rs. 10,000/- to the Calcutta High Court Advocates' Clerks Philanthropic Trust. The Learned Counsel for the Corporate Debtor has asserted that the compliance to the order, the Corporate Debtor has paid the said amount on 20.01.2023 through cheque, annexed at Page 15 to the Reply Affidavit.

38. Prayers **allowed** and accordingly, the application being **I.A. (IB) No. 1209/KB/2023** is **disposed of**.

D. Arvind
Member (Technical)

Bidisha Banerjee
Member (Judicial)

This Order is signed on the 05th Day of March 2024.

Bose, R. K. [LRA]