NATIONAL COMPANY LAW APPELLATE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

Company Appeal (AT) (Insolvency) No. 453 of 2026

[Arising out of the Impugned Order dated 14.01.2026 passed by the Adjudicating Authority, National Company Law Tribunal, Mumbai Bench-V in C.P. (IB) No. 887/MB/2024]

In the matter of:

Rattan Singh Builders Private Limited
Through its Director, Sukhdev Singh
Registered Office:
Plot No. 340/2, CRC Road,
Metro Pillar No. 28B, M.G. Road,
Near Sultanpur Metro Station,
Sultanpur, New Delhi – 110030
Email: rsb@rsbpltd.com

.... Appellant/
Operational Creditor

Versus

Indorama Ventures Yarns Private Limited
Registered Office: The Metropolitan,
6th Floor, Bandra Kurla Complex,
Bandra (East), Mumbai – 400051,
Maharashtra India.
Email: info@ivpl.com;
pawank.thakur@indorama-ind.com

.... Respondent/
Corporate Debtor

Present:

For Appellant : Mr. Mohit Chaudhary, Mr. Naveen Sharma, Advocates.

For Respondent : Mr. Abhijeet Sinha, Sr. Advocate with Mr. Sidhartha Sharma, Mr. Arjun Asthana, Ms. Aakanksha Sahni, Advocates.

J U D G M E N T

(06th May, 2026)

INDEVAR PANDEY, MEMBER (T)

The present appeal has been preferred by **Rattan Singh Builders Private Limited (Appellant / Operational Creditor)** against **Indorama Ventures Yarns Private Limited (Respondent / Corporate Debtor)**, assailing the order dated 14.01.2026 passed by the Ld. National Company Law Tribunal, Mumbai Bench – V (Adjudicating Authority) in **C.P. (IB) No. 887/MB/2024**, whereby the application filed by the Appellant under Section 9 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as **'Code'**)came to be dismissed on the ground of existence of an alleged "pre-existing dispute" between the parties.

2. The Appellant, Rattan Singh Builders Private Limited (RSB), has approached this Hon'ble Appellate Tribunal contending that despite crystallised and duly certified operational debt amounting to Rs. 4,88,42,350/- (including contractual interest @ 18% per annum) payable by the Respondent, Indorama Ventures Yarns Private Limited, the Learned Adjudicating Authority erroneously declined admission of the petition by treating belated and unsubstantiated disputes as pre-existing disputes under the Code.

FACTS OF THE CASE

3. The facts relevant for deciding this matter are as given below:

i. The Appellant, a construction company was awarded a contract by the Respondent through a Letter of Intent dated 25.06.2022 for execution of civil, structural and construction work for the DTY Project at its Nagpur facility, for a total contract value of Rs. 43,25,00,000/- plus GST, with payments to be made on the basis of unit-rate RA Bills.

ii. The contractual relationship was formalised by execution of a detailed Agreement / Work Order dated 13.07.2022**,** which provided for a structured payment mechanism, whereby RA Bills were to be certified by the Respondent and its Project Management Consultant, with 85% payment upon certification and 5% retention, along with quality verification protocols. The scope of work and financial consideration were subsequently revised through an Amended Work Order dated 14.06.2023**,** whereby the contract value was enhanced from Rs. 43,25,00,000/- to Rs. 49,46,75,441/-, and the Appellant continued execution in terms of revised quantities and scope.

iii. During execution, multiple extensions of time were granted by the Respondent through communications dated 03.03.2023, 14.06.2023, 20.11.2023, 03.02.2024 and 26.04.2024, extending completion timelines due to delays not solely attributable to the Appellant, and notably, no liquidated damages were imposed at the time of granting such extensions.

iv. The Appellant, in accordance with contractual terms, raised periodic RA Bills supported by measurement sheets and detailed quantity extracts, which were duly verified and certified by the Respondent's

engineers and PMC, and payments were made on earlier RA Bills without protest.

v. Substantial completion of the project occurred over the period 05.12.2023 to 26.05.2024, during which the project facilities were handed over in phases and became operational, and RA Bills up to RA-32 (Final Bill) stood certified, confirming completion of work.

vi. Following such closure, the Appellant issued a demand through an email dated 31.05.2024, seeking payment of outstanding certified dues, including RA Bills and retention money. The Appellant further issued a detailed demand through email dated 10.06.2024, claiming approximately Rs. 4.10 crores towards outstanding certified dues, retention money, and contractual interest post final closure.

vii. The Respondent, by its letter dated 12.06.2024, disputed the claim of the Appellant and stated that following deductions are to be made from the final bill of the Appellant namely:

- Liquidated Damages of Rs. 2,16,25,000/-,
- BOCW Cess recovery of Rs. 49,46,754/-,
- Alleged "mismatch" of Rs. 53,29,543/-, and

The Respondent admitted balance payable of Rs. 15,32,184/-, only to the Appellant for executed works. The Respondent also terminated the contract with the Appellant on account of various delays and quality issues vide the same letter dated 12.06.2024.

viii. Thereafter, the Appellant issued a statutory demand notice dated 10.08.2024 under Section 8 of the IBC, calling upon the Respondent to discharge the total operational debt of Rs. 4,88,42,350/- along with interest @ 18% per annum, failing which insolvency proceedings would be initiated.

ix. The Respondent, in reply through a notice dated 20.08.2024, raised allegations relating to delay, defective workmanship, Building and Other Construction Workers (BOCW) cess liability and levy of liquidated damages, asserting existence of disputes, which according to the Appellant were post facto and not contemporaneous with certification of RA Bills.

x. Upon failure of payment, the Appellant filed a Section 9 application in September 2024 before the Adjudicating Authority, seeking initiation of CIRP for the operational debt of Rs. 4,88,42,350/- along with interest @ 18% per annum.

xi. The Respondent filed its reply before the Adjudicating Authority, alleging pre-existing disputes concerning delay, quality issues, losses allegedly exceeding Rs. 9,38,00,000/-, and entitlement to invoke contractual remedies including liquidated damages and bank guarantees.

xii. The Adjudicating Authority passed the impugned order dated 14.01.2026, whereby it held that a bona fide pre-existing dispute existed and consequently dismissed the Section 9 application.

xiii. Being aggrieved by the said order, particularly on the ground that admitted and certified dues have been disregarded and post-demand disputes have been erroneously treated as pre-existing disputes, the Appellant has preferred the present appeal before this Hon'ble Appellate Tribunal.

Submissions of the Appellant/ Operational Creditor

4. Ld. Counsel for the Appellant/Operational Creditor submits that it had filed an application under Section 9 of the Insolvency and Bankruptcy Code, 2016 on account of an admitted operational debt exceeding Rs. 1 Crore and the existence of debt and default is clearly established on record. He submitted that upon certification of work by the Corporate Debtor, certified Running Account Bills were prepared and a Summary Sheet was generated. The figures reflected in the said Summary Sheet are not disputed by the Corporate Debtor at any stage, thereby amounting to a clear admission of liability.

5. He submitted that as per the undisputed Summary Sheet, a sum of Rs. 4,10,24,676/- remains outstanding, comprising certified bills amounting to Rs. 3,34,33,481/- and retention money of Rs. 75,91,194/-. He further submitted that the total operational debt, including interest separately calculated, aggregates to Rs. 4,88,42,350/- as on the date of issuance of Demand Notice dated 10.08.2024. The said debt arises from unpaid RA Bills Nos. 28 to 31, unpaid Final RA Bill No. 32, retention amount, and interest thereon.

6. It is submitted that prior to initiation of legal proceedings, the Appellant had duly intimated the Corporate Debtor regarding completion of work and outstanding dues through Demand Email dated 31.05.2024, followed by a Reminder Email dated 10.06.2024, clearly stating that legal recourse would be undertaken in case of non-payment.

7. Ld. Counsel submitted that in response to the said communications, and particularly upon the threat of legal action, the Corporate Debtor issued a letter dated 12.06.2024 titled "Notice for Final Settlement and issuance of Credit Note." Importantly, in the said communication, the Corporate Debtor does not dispute the outstanding amount of Rs. 4,10,24,676/-, but instead seeks to reduce the liability by raising unilateral and self-serving claims of set-off, namely:

- Liquidated Damages (LD): Rs. 2,16,25,000/-
- Labour Cess (under BOCW Rules): Rs. 49,46,754/-
- Alleged mismatch in payments: Rs. 53,29,543/-

After such deductions, the Corporate Debtor offered to pay a meagre sum of Rs. 15,32,184/-. It is submitted that this clearly amounts to an admission of debt, with only artificial deductions being introduced to evade liability.

8. He submits that the Adjudicating Authority failed to appreciate that there is a clear admission on the part of the Corporate Debtor regarding certified bills amounting to Rs. 3,34,33,481/-, and even after claiming set-off of Rs. 3,19,01,297/-, the Corporate Debtor itself acknowledges a balance payable amount of Rs. 15,32,184/-. This admission itself establishes existence

of debt and default. It is further submitted that once the Corporate Debtor has admitted the certified bills, the burden shifts upon it to justify the alleged set-offs from the record. However, the Corporate Debtor has failed to discharge this burden.

9. It is submitted that the alleged mismatch in payments of Rs. 53,29,543/- is entirely baseless. All invoices and corresponding payments made through banking channels are duly reflected in the records. There is no discrepancy whatsoever. This defence is illusory, sham, and a classic example of a moonshine defence liable to be rejected.

10. Ld. Counsel further submits that the deduction towards Labour Cess under the Building and Other Construction Workers Act is legally untenable. Under the statutory framework, the liability to pay cess is that of the employer, i.e., the Corporate Debtor, and not the contractor. Therefore, the claim of set-off of Rs. 49,46,754/- is contrary to law and cannot be sustained.

11. He submits that the Corporate Debtor, even as per its own admission, remains liable to pay the following amounts:

- Rs. 53,29,543/- (alleged mismatch wrongly deducted)
- Rs. 49,46,754/- (illegal BOCW cess deduction)
- Rs. 15,32,184/- (admitted payable amount)

Total: Rs. 1,18,08,481/-

He further submits that the retention amount of Rs. 75,91,194/- and applicable interest remain additionally payable and are independent of the above calculation.

12. It is submitted that the attempt of the Corporate Debtor to recover Building and Other Construction Workers (BOCW) Cess from the Appellant is ex facie illegal and contrary to the statutory provisions of the Building and Other Construction Workers' Welfare Cess Act, 1996. Section 3(1) of the Act imposes cess on the cost of construction incurred by the employer, while Section 3(2) mandates that such cess shall be collected from every employer. Further, Section 4 requires the employer to furnish returns, and Rule 4 of the 1998 Rules explicitly states that the cess shall be paid by the employer.

13. It is further submitted that the statutory scheme clearly establishes that the liability to pay cess is on the employer, i.e., the Corporate Debtor, and not on the contractor. Any attempt to shift such statutory liability onto the Appellant is void being opposed to public policy under Section 23 of the Indian Contract Act, 1872, and hence unenforceable. Accordingly, the deduction towards BOCW cess is liable to be rejected outright.

14. Regarding the mismatch in payments amounting to Rs. 53,29,543/- Learned counsel submits that it is entirely unsubstantiated and devoid of merit. The Corporate Debtor has failed to produce any evidence of incorrect invoicing, uncredited payments, or discrepancies in the certified Running Account Bills. On the contrary, the Summary Sheet and bank statements clearly demonstrate that all payments have been duly accounted for and credited.

15. He submits that this allegation is merely a smokescreen raised as an afterthought to evade liability. The invoices were accepted post inspection and verification, and the payments reflected in the bank records are undisputed.

Therefore, the plea of mismatch is nothing but lip service, bereft of any substance, and liable to be rejected in limine.

16. Summing up his arguments learned counsel submits that the defence raised by the Corporate Debtor is illusory and untenable in law, and there exists a clear, admitted operational debt and default. Accordingly, the impugned order deserves to be set aside and the application under Section 9 ought to be admitted.

Submissions of the Respondent

17. Shri Abhijeet Sinha, Ld. Sr. Counsel for Corporate Debtor submits that it had issued a Work Order dated 13.07.2022 which subsequently amended on 14.06.2023, for an aggregate value of Rs.49,46,75,441/- for execution of civil construction works relating to a DTY Plant. The scope of work was extensive and included excavation, PCC, RCC, flooring, drainage, structural works, finishing, and statutory compliances such as PF, ESI, and BOCW obligations.

18. He submits that the chronology of events clearly establishes that the Section 9 petition filed by the Appellant is nothing but a counterblast to the lawful termination of the contract by the Respondent on 12.06.2024. The Ld. Adjudicating Authority has rightly appreciated that multiple disputes had arisen between the parties much prior to issuance of the demand notice under Section 8 of the Code. He submits that such disputes pertained to (i) delays and non-completion of contractual obligations, (ii) poor quality and defective workmanship, (iii) levy of liquidated damages, (iv) non-payment of BOCW Cess,

and (v) losses suffered by the Respondent due to breaches committed by the Appellant.

19. Ld. Counsel submits that as per Clause 9 of the Agreement dated 13.07.2022, the Appellant was under a strict contractual obligation to complete the entire civil work within a period of 8 months from the date of issuance of the Letter of Intent. However, the Appellant admittedly failed to adhere to the contractual timelines and repeatedly defaulted in completing the works. It is further submitted that the Appellant itself sought multiple extensions, including extension up to 26.10.2023 and thereafter till January 2024, thereby unequivocally admitting its inability to complete the project within time. These admissions are borne out from email communications, which were duly considered by the Ld. Adjudicating Authority.

20. He submits that despite repeated indulgence and extensions granted by the Respondent, including a final extension up to 28.02.2024, the Appellant failed to complete the works. It is submitted that in light of such admitted and continued defaults, the Respondent was left with no option, but to terminate the Agreement vide notice dated 12.06.2024. The Ld. Adjudicating Authority has rightly held that disputes relating to delay and deficiency in service were clearly raised prior to termination and much before issuance of the Section 8 notice.

21. Ld. Counsel submits that the Appellant has erroneously contended that certification of Running Account (RA) Bills by the Project Management Consultant (PMC) creates an automatic liability upon the Respondent to make payments. This contention is wholly misplaced and contrary to the contractual

framework. It is submitted that as per the Agreement, the PMC was only responsible for certifying the quantity of work executed, whereas the quality of work remained subject to the satisfaction of the Respondent. Thus, certification of RA Bills was merely interim in nature and subject to final reconciliation upon completion of the project.

22. Ld. Counsel further submits that there is extensive correspondence which clearly shows that the Respondent had consistently raised serious issues regarding poor workmanship, defective execution, and discrepancies in quantities. These communications date back to as early as 14.06.2023 and continued till termination of the contract. It is his submission that the existence of such disputes, supported by documentary evidence, clearly negates the Appellant's claim of undisputed operational debt. The law is well settled that certification of RA Bills cannot be treated as admission of liability in cases, where disputes are evident from record. He submitted that the Ld. Adjudicating Authority has rightly relied upon settled jurisprudence to hold that such disputes fall outside the scope of summary proceedings under Section 9 of the Code.

23. Ld. Counsel further submits that the Clause 10 of the Agreement expressly provides for levy of liquidated damages at the rate of 0.5% per week of delay, subject to a maximum of 5% of the contract value, in the event of delay attributable to the Appellant. He submitted that the Respondent had repeatedly communicated to the Appellant regarding levy of such liquidated damages through emails dated 03.02.2024, 01.03.2024, and finally in the termination notice dated 12.06.2024. The Appellant's contention that such

levy was raised belatedly is factually incorrect and contrary to record. The contemporaneous communications clearly demonstrate that the issue of liquidated damages was raised well before termination and prior to initiation of insolvency proceedings. It is submitted that deduction on account of liquidated damages is a contractual right, and the same cannot be adjudicated in summary proceedings under the Code. Thus, the existence of such contractual claims itself constitutes a valid dispute.

24. Ld. Counsel submits that under the terms of the Letter of Intent as well as the Agreement, the obligation to pay BOCW Cess and comply with labour-related statutory requirements squarely rested upon the Appellant. He further submits that the parties had consistently understood and acknowledged that the responsibility for payment of such cess was that of the Appellant. It is his submission that the Appellant is estopped from denying its contractual obligation in this regard, and the issue of non-payment of BOCW cess constitutes yet another pre-existing dispute between the parties.

25. Ld. Counsel further submits that the Appellant has, through its own communications, repeatedly admitted the existence of disputes as well as its failure to complete the work within stipulated timelines. He submits that emails dated 14.06.2023, 03.02.2024, 24.04.2024, 03.05.2024, and other communications clearly reflect admissions regarding incomplete work, ongoing disputes, and requests for additional time.

26. He submitted that even after termination, the Appellant, by its communication dated 12.08.2024, expressed willingness to complete the remaining work and rectify deficiencies, thereby unequivocally acknowledging

the existence of defects and incomplete performance. Such clear and repeated admissions leave no manner of doubt that disputes existed between the parties well before issuance of the demand notice.

27. Ld. Counsel submits that the Appellant has sought to rely upon the meeting held on 26.04.2024 to suggest that a settlement or understanding had been reached between the parties. However, this assertion is wholly incorrect and misleading. The Minutes of Meeting were merely draft documents, which were never finalized or signed by the parties. No consensus or binding agreement was ever arrived at during the said meeting. The termination notice dated 12.06.2024 refers only to the understandings of the earlier meeting dated 03.02.2024 and makes no reference whatsoever to any settlement arising from the meeting of 26.04.2024. This clearly establishes that no agreement was reached in the said meeting.

28. Ld. Counsel submitted that the Appellant has also raised false claims regarding an amount of Rs.53,29,543/-, which had already been paid and was agreed to be adjusted through issuance of a credit note. The Appellant's subsequent claim is an afterthought and contrary to prior understanding between the parties. The Appellant has also made incorrect assertions regarding absence of dispute notice, whereas the Respondent had duly issued notice of dispute, which has been recorded in the Impugned Order. The law is well settled that where there exists a real dispute, communicated prior to issuance of Section 8 notice, a Section 9 application cannot be sustained. The Adjudicating Authority is not required to adjudicate the merits of the dispute, but only to ascertain its existence. In the present case, overwhelming material

on record clearly demonstrates pre-existing disputes, and therefore, the dismissal of the Section 9 petition is fully justified.

29. Concluding his submission, Ld. Counsel states that in view of the aforesaid facts, circumstances, and settled legal position, it is submitted that the present appeal is devoid of merit and is liable to be dismissed.

ANALYSIS AND FINDINGS

30. We have gone through the records of the case and heard the Ld. Counsels in detail. Both the parties have also submitted their written submissions with citations in support of their contentions.

31. The sole issue which arises for consideration in the present appeal is whether the Section 9 application filed by the Appellant/Operational Creditor was rightly rejected on the ground of existence of a "pre-existing dispute", and whether the Impugned Order dated 14.01.2026 passed by the Learned Adjudicating Authority suffers from any legal infirmity warranting interference under Section 61 of the Code.

32. The scope of inquiry in such matters is well-settled; the Adjudicating Authority is not required to adjudicate upon the merits of the claim or determine the exact liability, but only to examine whether there exists a real dispute between the parties prior to issuance of the demand notice, and whether such dispute is bona fide and not a mere sham defence.

33. The Appellant has contended that the operational debt arises from unpaid certified Running Account (RA) Bills Nos. 28 to 31 and the final RA Bill No. 32, along with retention money and interest, aggregating to approximately

Rs. 4.88 crores. It is urged that these RA Bills were duly certified by the Project Management Consultant and the Respondent's engineers, and therefore the liability stood crystallised. The Appellant has further relied upon a summary sheet and the Respondent's own communication dated 12.06.2024 to argue that even as per the Respondent's calculation, a substantial amount remained payable. It is also the case of the Appellant that during the meeting held on 26.04.2024, the parties had arrived at a "final closure" of the contract with certain descoping of works, and no dispute was recorded regarding the certified dues. According to the Appellant, the subsequent allegations of delay, poor quality, liquidated damages, BOCW cess, and mismatch in payments are afterthoughts, raised only after the issuance of the demand notice dated 10.08.2024.

34. Per contra, the Respondent has placed extensive reliance on the contractual terms and contemporaneous correspondence to demonstrate that disputes existed throughout the execution of the project. It is submitted that the Letter of Intent dated 25.06.2022 and the Agreement dated 13.07.2022 required the Appellant to complete the civil construction works within a stipulated period of 8 months, making time the essence of the contract. However, the Appellant failed to adhere to the timeline and repeatedly sought extensions, including requests extending completion up to October 2023 and thereafter till January 2024. It is further pointed out that the Respondent granted extensions up to 28.02.2024, but even within the extended timelines, the work remained incomplete. The Respondent has also relied upon multiple emails exchanged between June 2023 and June 2024 to show that issues

relating to delay, defective workmanship, and deficiencies in quantity and quality of work were repeatedly raised. The Respondent has further contended that under the contract, certification by the PMC was limited to quantity of work, while quality and satisfaction were to be determined by the Respondent. Ultimately, due to continued delay and unsatisfactory performance, the contract was terminated on 12.06.2024. The Respondent has also justified deductions towards liquidated damages, BOCW cess, and other losses as being in terms of the contractual provisions and prior communications.

35. We note that the Respondent first issued a Letter of Intent dated 25.06.2022 and thereafter a Work Order/Agreement dated 13.07.2022 for civil construction work of the DTY Project, which was later amended on 14.06.2023 and the total contract value was increased to Rs.49,46,75,441/-. As per the contract, the Appellant had to complete the work within 8 months. However, the work was not completed on time, and the Appellant repeatedly asked for extension of time through emails dated 13.07.2023 and 18.11.2023, seeking time first till October 2023 and then till January 2024. The Respondent granted extensions, including the last extension up to 28.02.2024 through email dated 03.02.2024. Even after this, disputes regarding delay, incomplete work, poor quality, and defective workmanship continued. In emails dated 24.04.2024 and 03.05.2024, the Appellant itself admitted that some work was still incomplete. Although the Appellant relies on the meeting dated 26.04.2024 and claims that there was a final closure, the signed minutes of that meeting are not on record indicating any final settlement. Finally, the Respondent terminated the contract on 12.06.2024 due to delay and unsatisfactory work. After this, the Appellant issued the demand notice under

Section 8 on 10.08.2024, and the Respondent replied by pointing out disputes which had already existed for a long time. With these facts in mind, we now examine whether the Section 9 application was rightly dismissed on the ground of pre-existing dispute.

36. Upon a detailed consideration of the material on record, we find that the dispute between the parties is does not appear to be superficial or belated assertion, but is deeply rooted in the entire course of contractual performance and is clearly evidenced through a continuous chain of contemporaneous communications exchanged between the parties. The record reflects that as early as 14.06.2023, the Respondent had raised concerns regarding the Appellant's performance, including delay in execution, inadequate progress, and deficiencies in work, which were acknowledged by the Appellant itself in its reply. Thereafter, a series of emails and communications continued between the parties, including communication dated 20.09.2023, wherein the Respondent specifically highlighted issues relating to poor quality of work, defects in execution, and discrepancies in quantity. These were not isolated observations, but formed part of repeated follow-ups and reminders issued by the Respondent over time. These emails have been noted in the impugned order.

37. The Appellant's own conduct, as reflected in its emails dated 13.07.2023, 18.11.2023, and subsequent communications, further substantiates the existence of dispute. In these emails, the Appellant sought extension of time for completion of work, initially up to 26.10.2023 and thereafter till January 2024, while expressly admitting that the work remained

incomplete. These requests for extension were not one-time requests, but were part of a continuing pattern, with further requests being made even during meetings held in early 2024. The Respondent, despite its dissatisfaction, granted extensions from time to time, including a final extension up to 28.02.2024 vide email dated 03.02.2024, clearly indicating that the project had not been completed within the contractual timeline. Even in the Appellant's email dated 03.02.2024, it acknowledged that the "remaining works" were yet to be completed and that issues between the parties were still "under process of settlement".

38. Further, communications dated 24.04.2024 and 03.05.2024 clearly record that the Appellant admitted that the work was still incomplete and required additional time for completion. In the draft Minutes of Meeting dated 26.04.2024, it was also recorded that certain works remained pending and required completion, thereby negating the Appellant's contention of a complete and final closure. Importantly, the said Minutes of Meeting remained in draft form and were never executed between the parties, which itself indicates that no final agreement or settlement was reached. The absence of any signed document or mutual acknowledgment of closure is a critical factor, especially when read in light of subsequent events.

39. A plain reading of the contractual clauses supports the Respondent's case and shows that certification of RA Bills by the PMC did not amount to a final admission of liability. Clause 2(B) of the Work Order dated 13.07.2022 which was issued pursuant to Letter of Intent (LoI) dated 30.06.2022, provides that 85% payment was to be released against RA Bills certified by the

PMC/IVYPL Engineer on work progress basis, which shows that such certification was only for interim release of payment based on quantity and progress of work. The same is extracted below:

> ***2. Contract Value & Payment Terms***
> *.......*
> *(B) 85% of total order value with 100% taxes shall be released against RA Bill within 15 days after submission of Bill (work progress basis as per contract) certified by PMC/IVYPL Engineer.*

40. We now take a look at Clause 4(E) of the same workorder, which is extracted below:

> ***4. Conditions of Work***
> *.........*
> *E) All work covered under this contract must be done to the complete satisfaction of the COMPANY. In case work carried out/ or if any work/ portion of the work is delayed appropriate deductions shall be made by COMPANY.*

It is clear from this clause that all work had to be completed to the full satisfaction of the Company. Secondly, if the work was delayed or found unsatisfactory, appropriate deductions could be made by the Company. Thus, final satisfaction regarding quality and completion remained with the Company/Corporate Debtor and not with the PMC. It should be noted that the Respondent has insisted in correspondence that its Engineer has not certified the final quality and quantity of work due to defects so the question of balance payment beyond 85% does not arise.

41. The clause in the Work Order relating to compliance with and statutory dues, including labour cess, is the Clause 3(F) which is extracted below:

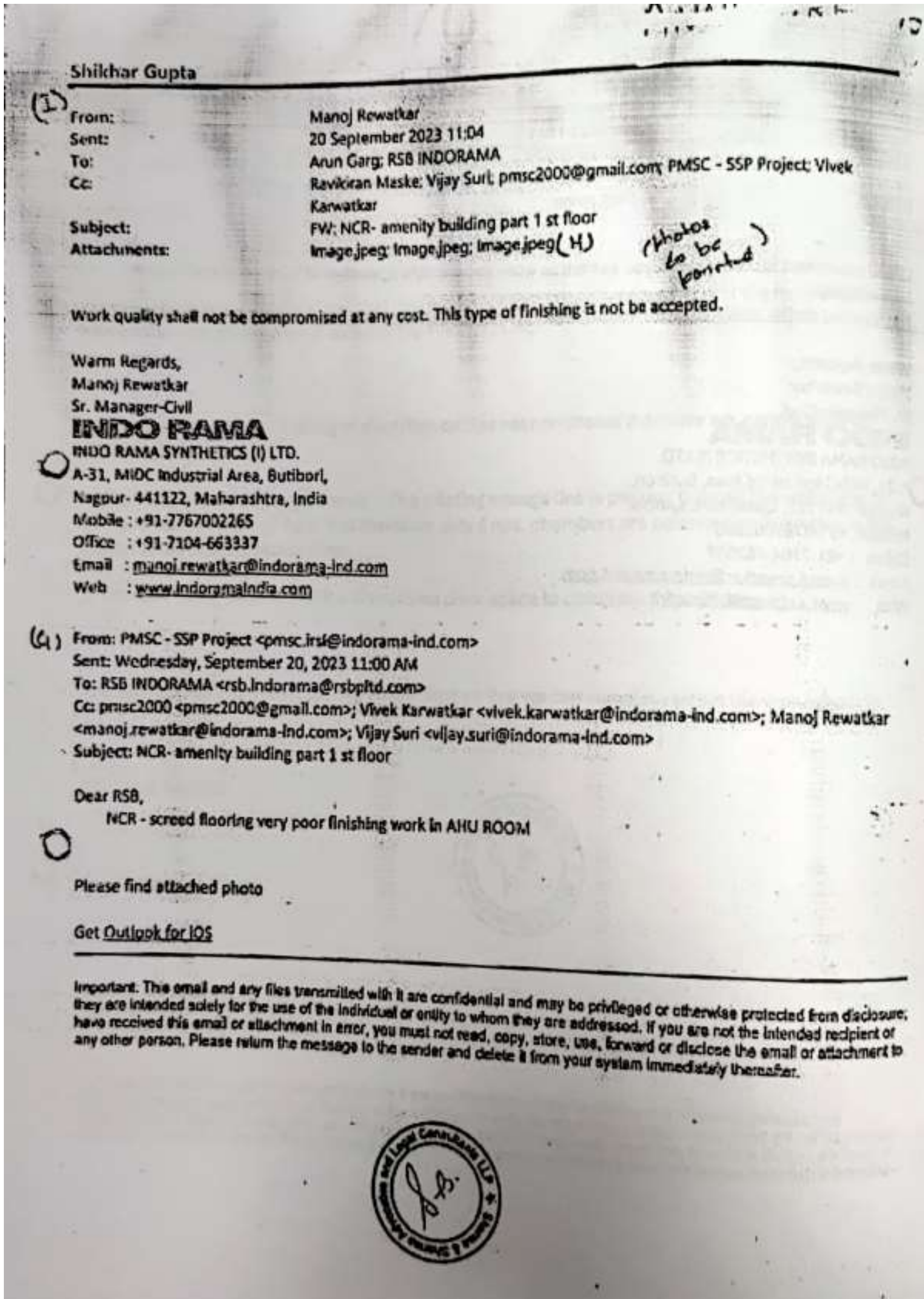
> ***3. Workforce***
> *.........*
> *F) The RSB shall ensure the compliance of all provisions of the Labour legislation and all other applicable and related enactments. The COMPANY shall not be held responsible for violation of any provisions of Labour legislation or any other applicable and related enactments,*

> *by the RSB in respect of his workforce or otherwise. The RSB shall also ensure that statutory returns are timely deposits/payments made towards contributions of P.F. etc. to their work force. Any default or liability on account of this aforesaid shall be solely that of the RSB and the COMPANY shall not be held liable on whatsoever account.*
>
> *(Emphasis supplied)*

42. We note from Clause-3(F) of the work order that it makes the Appellant responsible for compliance with Labour Laws and specifically states that any such liability in respect of the work force belonging to the operational creditor shall be solely that of OC/RSB. Therefore, the Respondent's deductions towards defective work, delay, and BOCW cess arise from the contract itself and cannot be treated as an afterthought or a false defence.

43. Simultaneously, the Respondent continued to raise detailed objections regarding quality and workmanship through multiple emails spanning from June 2023 to June 2024, including a set of approximately 23 communications specifically documenting deficiencies in construction, defects in execution, and mismatch in quantities. These communications, as reflected in the record, include repeated references to substandard work, non-compliance with specifications, and requirement of rectification, thereby demonstrating that the dispute was not vague but supported by specific factual assertions. One such mail dated 20.09.2023 about quality is extracted below:

Email dated 20.09.2023



Shikhar Gupta

(1)

From: Manoj Rewatkar
Sent: 20 September 2023 11:04
To: Arun Garg; RSB INDORAMA
Cc: Ravikiran Maske; Vijay Suri; pmsc2000@gmail.com; PMSC - SSP Project; Vivek Karwatkar
Subject: FW: NCR- amenity building part 1 st floor
Attachments: image.jpeg; image.jpeg; image.jpeg (4) (photos to be printed)

Work quality shall not be compromised at any cost. This type of finishing is not be accepted.

Warm Regards,
Manoj Rewatkar
Sr. Manager-Civil
INDO RAMA
INDO RAMA SYNTHETICS (I) LTD.
A-31, MIDC Industrial Area, Butibori,
Nagpur- 441122, Maharashtra, India
Mobile : +91-7767002265
Office : +91-7104-663337
Email : manoj.rewatkar@indorama-ind.com
Web : www.indoramaindia.com

(4) From: PMSC - SSP Project <pmsc.irsl@indorama-ind.com>
Sent: Wednesday, September 20, 2023 11:00 AM
To: RSB INDORAMA <rsb.indorama@rsbpltd.com>
Cc: pmsc2000 <pmsc2000@gmail.com>; Vivek Karwatkar <vivek.karwatkar@indorama-ind.com>; Manoj Rewatkar <manoj.rewatkar@indorama-ind.com>; Vijay Suri <vijay.suri@indorama-ind.com>
Subject: NCR- amenity building part 1 st floor

Dear RSB,

NCR - screed flooring very poor finishing work in AHU ROOM

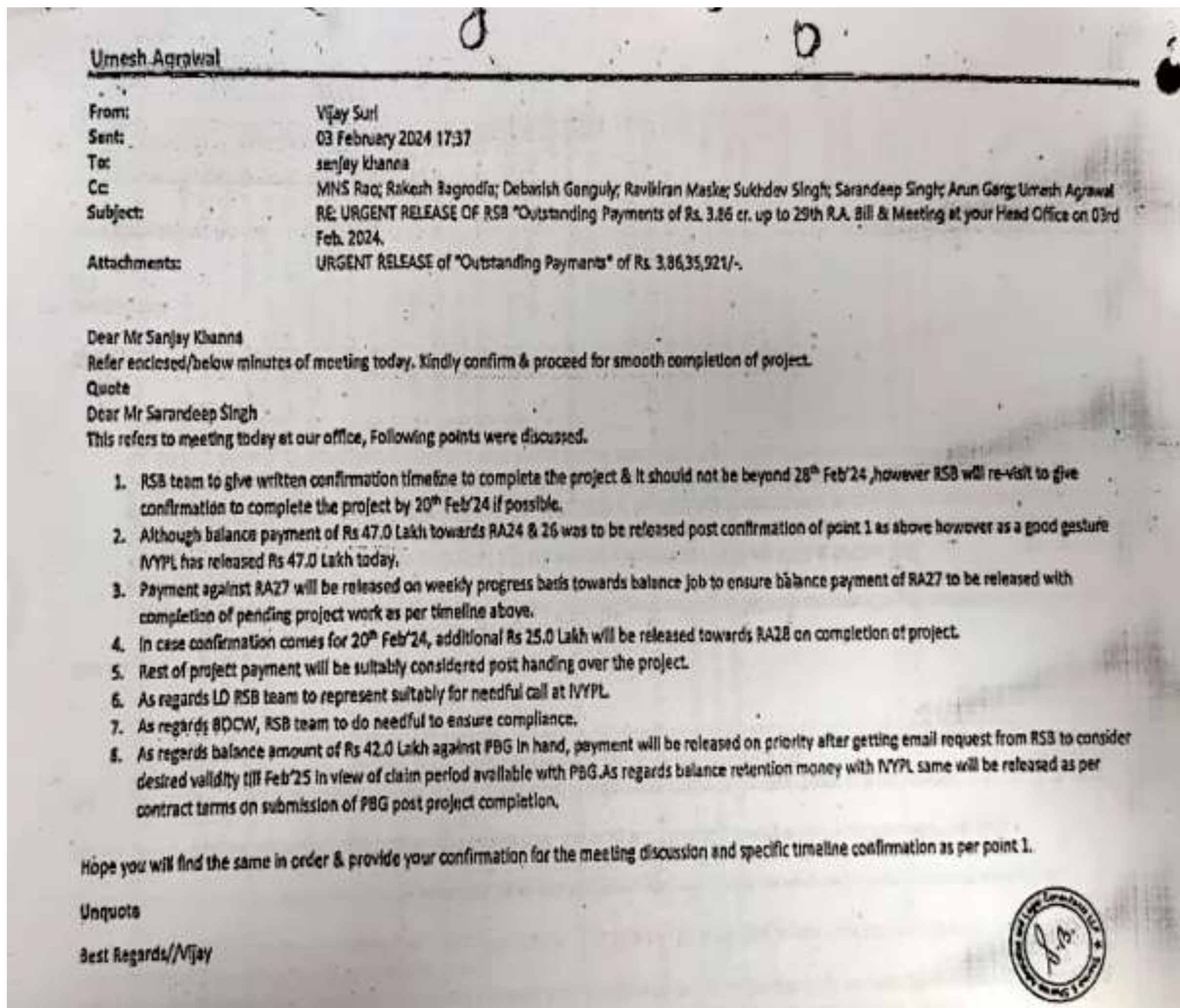
Please find attached photo

Get Outlook for IOS

Important: This email and any files transmitted with it are confidential and may be privileged or otherwise protected from disclosure, they are intended solely for the use of the individual or entity to whom they are addressed. If you are not the intended recipient or have received this email or attachment in error, you must not read, copy, store, use, forward or disclose the email or attachment to any other person. Please return the message to the sender and delete it from your system immediately thereafter.

44. In addition to the above, the Respondent had also communicated, through its emails dated 03.02.2024, 01.03.2024, and finally through the termination notice dated 12.06.2024, that liquidated damages would be levied in terms of the contract due to delay attributable to the Appellant. The emails dated 03.02.2024, and 12.06.2024 are extracted below:

Email dated 03.02.2024



Umesh Agrawal

From: Vijay Suri
Sent: 03 February 2024 17:37
To: sanjay khanna
Cc: MNS Rao; Rakesh Bagrodia; Debasish Ganguly; Ravikiran Maske; Sukhdev Singh; Sarandeep Singh; Arun Garg; Umesh Agrawal
Subject: RE: URGENT RELEASE OF RSB "Outstanding Payments of Rs. 3.86 cr. up to 29th R.A. Bill & Meeting at your Head Office on 03rd Feb. 2024.
Attachments: URGENT RELEASE of "Outstanding Payments" of Rs. 3,86,35,921/-.

Dear Mr Sanjay Khanna
Refer enclosed/below minutes of meeting today. Kindly confirm & proceed for smooth completion of project.
Quote
Dear Mr Sarandeep Singh
This refers to meeting today at our office, Following points were discussed.

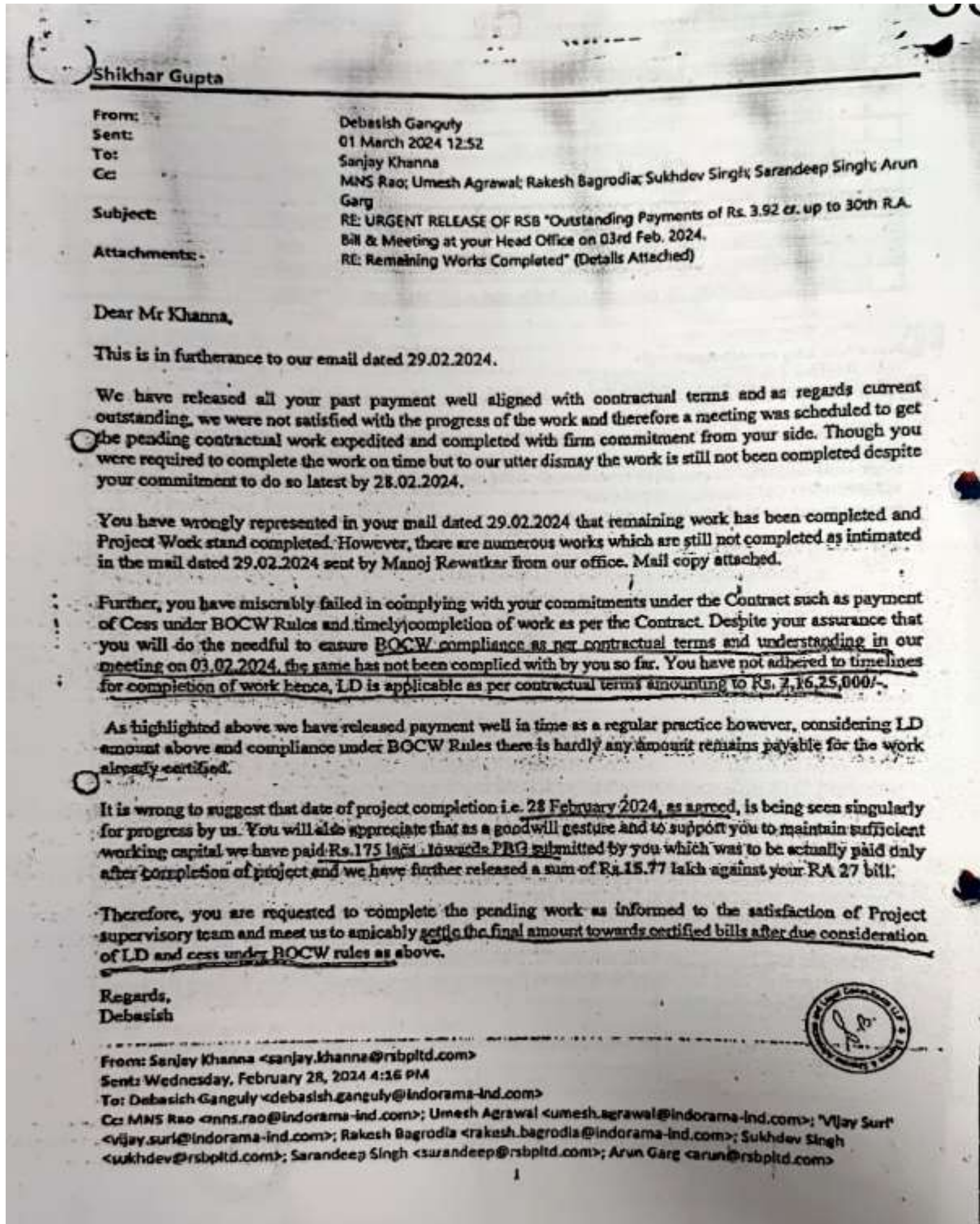
1. RSB team to give written confirmation timeline to complete the project & It should not be beyond 28th Feb'24 ,however RSB will re-visit to give confirmation to complete the project by 20th Feb'24 if possible.
2. Although balance payment of Rs 47.0 Lakh towards RA24 & 26 was to be released post confirmation of point 1 as above however as a good gesture IVYPL has released Rs 47.0 Lakh today.
3. Payment against RA27 will be released on weekly progress basis towards balance job to ensure balance payment of RA27 to be released with completion of pending project work as per timeline above.
4. In case confirmation comes for 20th Feb'24, additional Rs 25.0 Lakh will be released towards RA28 on completion of project.
5. Rest of project payment will be suitably considered post handing over the project.
6. As regards LD RSB team to represent suitably for needful call at IVYPL.
7. As regards BOCW, RSB team to do needful to ensure compliance.
8. As regards balance amount of Rs 42.0 Lakh against PBG in hand, payment will be released on priority after getting email request from RSB to consider desired validity till Feb'25 in view of claim period available with PBG.As regards balance retention money with IVYPL same will be released as per contract terms on submission of PBG post project completion.

Hope you will find the same in order & provide your confirmation for the meeting discussion and specific timeline confirmation as per point 1.

Unquote

Best Regards//Vijay

Email dated 01.03.2024



Shikhar Gupta

From: Debasish Ganguly
Sent: 01 March 2024 12:52
To: Sanjay Khanna
Cc: MNS Rao; Umesh Agrawal; Rakesh Bagrodia; Sukhdev Singh; Sarandeep Singh; Arun Garg
Subject: RE: URGENT RELEASE OF RSB "Outstanding Payments of Rs. 3.92 cr. up to 30th R.A. Bill & Meeting at your Head Office on 03rd Feb. 2024. RE: Remaining Works Completed" (Details Attached)
Attachments: -

Dear Mr Khanna,

This is in furtherance to our email dated 29.02.2024.

We have released all your past payment well aligned with contractual terms and as regards current outstanding, we were not satisfied with the progress of the work and therefore a meeting was scheduled to get the pending contractual work expedited and completed with firm commitment from your side. Though you were required to complete the work on time but to our utter dismay the work is still not been completed despite your commitment to do so latest by 28.02.2024.

You have wrongly represented in your mail dated 29.02.2024 that remaining work has been completed and Project Work stand completed. However, there are numerous works which are still not completed as intimated in the mail dated 29.02.2024 sent by Manoj Rewatkar from our office. Mail copy attached.

Further, you have miserably failed in complying with your commitments under the Contract such as payment of Cess under BOCW Rules and timely completion of work as per the Contract. Despite your assurance that you will do the needful to ensure BOCW compliance as per contractual terms and understanding in our meeting on 03.02.2024, the same has not been complied with by you so far. You have not adhered to timelines for completion of work hence, LD is applicable as per contractual terms amounting to Rs. 7,16,25,000/-.

As highlighted above we have released payment well in time as a regular practice however, considering LD amount above and compliance under BOCW Rules there is hardly any amount remains payable for the work already certified.

It is wrong to suggest that date of project completion i.e. 28 February 2024, as agreed, is being seen singularly for progress by us. You will also appreciate that as a goodwill gesture and to support you to maintain sufficient working capital we have paid Rs.175 lacs towards PBG submitted by you which was to be actually paid only after completion of project and we have further released a sum of Rs.15.77 lakh against your RA 27 bill.

Therefore, you are requested to complete the pending work as informed to the satisfaction of Project supervisory team and meet us to amicably settle the final amount towards certified bills after due consideration of LD and cess under BOCW rules as above.

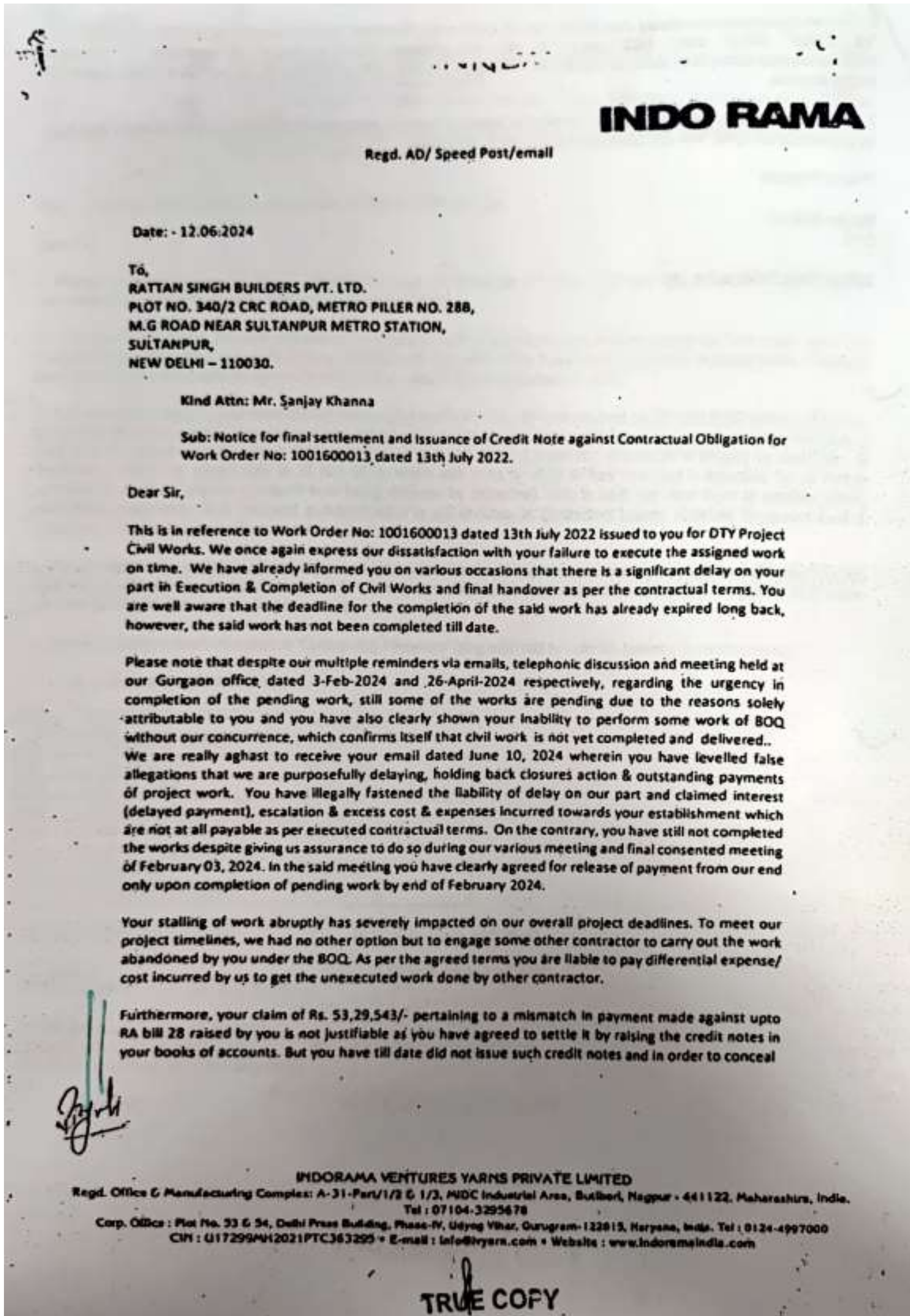
Regards,
Debasish

From: Sanjay Khanna <sanjay.khanna@rsbpltd.com>
Sent: Wednesday, February 28, 2024 4:16 PM
To: Debasish Ganguly <debasish.ganguly@indorama-ind.com>
Cc: MNS Rao <mns.rao@indorama-ind.com>; Umesh Agrawal <umesh.agrawal@indorama-ind.com>; 'Vijay Suri' <vijay.suri@indorama-ind.com>; Rakesh Bagrodia <rakesh.bagrodia@indorama-ind.com>; Sukhdev Singh <sukhdev@rsbpltd.com>; Sarandeep Singh <sarandeep@rsbpltd.com>; Arun Garg <arun@rsbpltd.com>

1

45. The culmination of these disputes is reflected in the termination of the contract on 12.06.2024, wherein the Respondent expressly referred to the Appellant's failure to complete the work within the extended timelines and the unsatisfactory nature of performance. The termination notice has also referred to prior communications and meetings, particularly the understandings reached during the meeting dated 03.02.2024, while notably making no reference to any alleged final settlement of 26.04.2024. The Appellant, in its response dated 04.07.2024, did not dispute the absence of any concluded agreement arising out of the said meeting, further reinforcing that the disputes remained unresolved. The Termination notice dated 12.06.2024 is reproduced below:

Termination notice dated 12.06.2024



INDO RAMA

Regd. AD/ Speed Post/email

Date: - 12.06.2024

To,
RATTAN SINGH BUILDERS PVT. LTD.
PLOT NO. 340/2 CRC ROAD, METRO PILLER NO. 288,
M.G ROAD NEAR SULTANPUR METRO STATION,
SULTANPUR,
NEW DELHI – 110030.

Kind Attn: Mr. Sanjay Khanna

Sub: Notice for final settlement and Issuance of Credit Note against Contractual Obligation for Work Order No: 1001600013 dated 13th July 2022.

Dear Sir,

This is in reference to Work Order No: 1001600013 dated 13th July 2022 issued to you for DTY Project Civil Works. We once again express our dissatisfaction with your failure to execute the assigned work on time. We have already informed you on various occasions that there is a significant delay on your part in Execution & Completion of Civil Works and final handover as per the contractual terms. You are well aware that the deadline for the completion of the said work has already expired long back, however, the said work has not been completed till date.

Please note that despite our multiple reminders via emails, telephonic discussion and meeting held at our Gurgaon office dated 3-Feb-2024 and 26-April-2024 respectively, regarding the urgency in completion of the pending work, still some of the works are pending due to the reasons solely attributable to you and you have also clearly shown your inability to perform some work of BOQ without our concurrence, which confirms itself that civil work is not yet completed and delivered.. We are really aghast to receive your email dated June 10, 2024 wherein you have levelled false allegations that we are purposefully delaying, holding back closures action & outstanding payments of project work. You have illegally fastened the liability of delay on our part and claimed interest (delayed payment), escalation & excess cost & expenses incurred towards your establishment which are not at all payable as per executed contractual terms. On the contrary, you have still not completed the works despite giving us assurance to do so during our various meeting and final consented meeting of February 03, 2024. In the said meeting you have clearly agreed for release of payment from our end only upon completion of pending work by end of February 2024.

Your stalling of work abruptly has severely impacted on our overall project deadlines. To meet our project timelines, we had no other option but to engage some other contractor to carry out the work abandoned by you under the BOQ. As per the agreed terms you are liable to pay differential expense/ cost incurred by us to get the unexecuted work done by other contractor.

Furthermore, your claim of Rs. 53,29,543/- pertaining to a mismatch in payment made against upto RA bill 28 raised by you is not justifiable as you have agreed to settle it by raising the credit notes in your books of accounts. But you have till date did not issue such credit notes and in order to conceal

INDORAMA VENTURES YARNS PRIVATE LIMITED
Regd. Office & Manufacturing Complex: A-31-Part/1/2 & 1/3, MIDC Industrial Area, Butibori, Nagpur - 441122, Maharashtra, India.
Tel : 07104-3295678
Corp. Office : Plot No. 53 & 54, Delhi Press Building, Phase-IV, Udyog Vihar, Gurugram-122015, Haryana, India. Tel : 0124-4997000
CIN : U17299MH2021PTC363295 • E-mail : info@ivyarn.com • Website : www.indoramaindia.com

TRUE COPY

INDO RAMA

your shortcomings you are now claiming the amount in gross violation of the understanding arrived between us. You were aware that credit notes for the same has to be issued at your end hence, same is clearly visible in all your communication till our aforesaid meeting, where no such claim was raised. This is just an afterthought devised by you to entangle the issues.

You will appreciate that only on your request and considering our long-term business relationship, we had released RA bill payment on-time-to-time basis including PBG retention amount of Rs 175 Lakh, which was actually due post completion of work and further we have released payment due against RA 27 & RA 28 which was not payable as per our understanding arrived in our meeting of February 03, 2024.

Please note that delivery of your contractual works is of very substandard and not meeting desired quality specification as per contract terms and therefore, are being redone time and again extending the tenure at your cost and expense.

You are well aware that time is the essence of this contract, but you have failed miserably to carry out the said work within time and have not provided any response / reasons whatsoever regarding the indefinite delay being caused at your end. Hence, we have left with no alternative than to levy Liquidated damages upto May 31, 2024 as per our contractual terms. Furthermore, you have also till date did not settle your liability to pay labour cess under BOCW Rules Hence, after considering your liability to pay us Liquidated damages amounting to Rs. 2,16,25,000/- and labour cess liability amounting to Rs. 49,46,754/-, only an amount of Rs. 15,32,184/- remains payable against your RA Bills 29, 30, 31 & 32 (subject to certification of RA Bill 32 by us).

So far as release of your retention amount is concerned the same is not payable at present as it was against furnishing of PBG post completion of civil work which is not yet completed.

In the aforesaid circumstances you are advised to issue a credit note amounting to Rs. 2,65,71,754/- to us towards your liability to pay liquidated damages and labour cess as above as per contractual terms.

We hope that good sense will prevail over you, and you will issue credit note as aforesaid. Please treat this communication as termination of the contract/ Work Order No: 1001600013 dated 13th July 2022. Please remove all your workers, tools and tackles from our site on or before 20-June-2024. As regard to your retention money, you may collect the same on submission of PBG as per contract terms and also you may collect Rs. 15,32,184/- after confirmation of no dues.

For Indorama Ventures Yarn Pvt. Ltd.

Authorized Signatory

INDORAMA VENTURES YARNS PRIVATE LIMITED
Regd. Office & Manufacturing Complex: A-31-Part/1/2 & 1/3, MIDC Industrial Area, Butibori, Nagpur - 441122, Maharashtra, India.
Tel : 07104-3295678
Corp. Office : Plot No. 53 & 54, Delhi Press Building, Phase-IV, Udyog Vihar, Gurugram-122015, Haryana, India. Tel : 0124-4997000
CIN : U17299MH2021PTC363295 • E-mail : info@ivyarn.com • Website : www.indoramaindia.com

TRUE COPY

46. Even after the termination, the Appellant, by its communication dated 12.08.2024, expressed willingness to complete the remaining works and cure

discrepancies, which is a clear admission that the work was not completed to satisfaction of the corporate debtor and issues were still subsisting. This communication, coming after receipt of termination notice and even after the issuance of demand notice dated 10.08.2024 under Section 8 of the Code issued by the Appellant, clearly indicates that disputes regarding performance and completion were ongoing and had not been resolved at any stage. The communication dated 12.08.2024 has been extracted below:

August 12, 2024

To,

1. *Indorama Ventures Yarns Pvt. Ltd.*
Corp. Office: 20th Floor DLF Square,
DLF Phase- 122002
(Haryana)

2. *Indorama Ventures Yarns Pvt. Ltd.*
Corp. Office: Plot No.52 & 54
Delhi Press Building,
Phase-IV, Udyog Vihar,
Gurgaon- 122015
(Haryana)

Kind attention :- ***Authorised Signatory***

Sub :- (PENDING) NON PAYMENT RA BILL-32, DUE TO BREACH OF CONTRACT, CRITICAL & FUNDAMENTAL DESIGN & ENGINEERING DEFECTS ETC.

Ref. :- (a) Para 2,3 & 5 of RSB letter dated 04th July 2024.
(b) RSB mail dt. 22nd July 2024 @1:41 PM
(c) GCC Clause 7, clause 8, clause 14(B), clause 2(B) & warranty-12 months from date of commissioning (LOI).

Dear Sir,

1. *This is with reference to your letter dated 08th August 2024 on the above subject matter.*
2. *In this regard your attention is invited to para2,3 & 5 of our letter dated 04th July 2024 & mail dt. 25th July 2024 @16:53 wherein it was informed that on "Completion of Project Works" (as on 25th May 2024), RA Bill -32 (Final) was*

submitted on 27th may 2024 @ 17:33 PM for Rs.1,06,79,163/- along with supporting documents & MS (as works executed), thereby activating the Project Warranty- 12 months from date of commissioning of Areas, Facilities as handed over on various dates & mails, with RSB 'Repair Team' available at site to address the issue of 'Snags/defects' as in OLP Period.

3. *That the "Works Executed" in RA Bill-32 were thoroughly measured, verified (jointly) by Mr. Manoj, Vivek & Mr. Davinder in presence of our Billing Engineer Mr. Vijay Kumar which was completed in all respect of certification in all respect of certification on 02nd July 2024. The same was forwarded by your staff to office of Mr. Ganguly for clearance as in contract terms.*

4. *However, vide your letter dt. 08th August, 2024 certified payments of Rs.1,08,71,581/- are being withheld on the ground of :-*

   (a) Critical and Fundamental Design and Engineering Defects etc.

   (b) Measurement calculation and work quality assessed by Indorama Engineers (from srl 1 to 15).

5. *In view of the issue/disputes now raised at para 4 above, (further to our accepted mail dt. 24th May 2024 @06:38 PM) RSB confirms the undermentioned assertions :-*

   (a) The subject issues at 4(a) & (b) be first referred to the Architect being the originator of drawings & BOQ and to further act upon as in GCC clause 14(B) and in tandem with GCC clause 8, to give his detailed report in writing for us to rectify the reported defects in time.

   (b) That on the discrepancies and incomplete works with respect to RA Bill-32 as informed vide your letter dt.08.08.2024, from srl. 1 to 16, 'RSB Repair Team' specifically stationed at site with materials, if available and ready to repair such 'Snags/Defects' (being part of DLP). Please share complete details on priority. In the interim you are requested to give all approvals, permissions to 'RSB Repair Team' without any hindrance, restrains to commence necessary task/work as in contract terms.

6. *We shall be obliged.*

Thanking you,
Yours faithfully

Sanjay Khanna
(CFO)
(Rattan Singh Builders Pvt. Ltd.)

47. When the above sequence of events is read as a whole, it becomes evident that the disputes between the parties were continuous, well-

documented, and existed much prior to the issuance of the demand notice dated 10.08.2024. The record reflects a consistent pattern of disagreement relating to delay; incomplete work; poor quality; contractual breaches; statutory liabilities; and financial adjustments; all of which were actively discussed and contested between the parties over a prolonged period. These are not matters which have been artificially created in response to the demand notice, but are intrinsic to the contractual relationship and its breakdown.

48. In such circumstances, the contention of the Appellant that the dispute is a mere afterthought cannot be accepted. On the contrary, the records clearly demonstrate that the disputes were real, substantial, and pre-existing, supported by a series of contemporaneous communications and culminating in termination of the contract itself.

49. In view of the detailed factual analysis as above, we are satisfied that the disputes between the parties were continuous, well-documented, and existed much prior to the issuance of the Section 8 demand notice dated 10.08.2024. The record clearly reflects repeated communications regarding delay in completion, incomplete execution of work, poor quality and workmanship, levy of liquidated damages, and statutory obligations such as BOCW cess, all of which remained unresolved throughout the subsistence of the contract and ultimately culminated in its termination on 12.06.2024. These disputes are supported by contemporaneous emails, admissions of the Appellant seeking extensions, and subsequent communications even after termination, and therefore cannot be characterized as illusory or an afterthought.

50. The Respondent has further relied upon by the judgment of Hon'ble Supreme Court in "*Mobilox Innovations Pvt. Ltd. v. Kirusa Software Pvt. Ltd., (2018) 1 SCC 353"* which lays down the law that once a plausible and genuine pre-existing dispute is established, the application under Section 9 must be rejected, without entering into the merits of the claims and counterclaims. In the present case, there are pre-existing disputes which were not resolved till the issuance of notice under Section 8 of the Code. The nature of disputes raised clearly requires detailed examination of evidence and contractual obligations, which falls outside the limited scope of insolvency proceedings. We note that the present case is squarely covered by the judgment in Mobilox (supra).

51. Accordingly, we are of the view that the Learned Adjudicating Authority has rightly appreciated both the factual matrix and the legal position and in view of the same dismissed the Section 9 application. The Impugned Order dated 14.01.2026 does not suffer from any infirmity or perversity and warrants no interference at our end.

52. In view of the findings above, the Appeal is dismissed. Pending IAs, if any, are closed. No order as to costs.

[Justice Ashok Bhushan)
Chairperson

[Mr. Indevar Pandey]
Member (Technical)

Place: New Delhi

Harleen/
Pragya (LRA)