

NATIONAL COMPANY LAW APPELLATE TRIBUNAL, NEW DELHI

Company Appeal (AT) (Insolvency) No. 1090 of 2019

IN THE MATTER OF:

Suman Chakraborty

...Appellant

Vs

Anhui Technology Imp. & Exp. Co. Ltd.

....Respondent

Present:

For Appellant: Mr. Abhigyan Choudhury and Mr. Ateendra Saumya Singh, Advocates.

For Respondent: Mr. Pranav Chadha, Mr. Arvind Kumar Gupta and Ms. Henna George, Advocates for R-1.

Mr. Amit Bhatnagar and Mr. Gautam Singhal, Advocates for IRP.

ORDER

07.01.2020: Pursuant to application under Section 9 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as 'I&B Code') filed by 'Anhui Technology Imp. & Exp. Co. Ltd.' (Operational Creditor) Corporate Insolvency Resolution Process having initiated by the Adjudicating Authority (National Company Law Tribunal), New Delhi by impugned order dated 19th September, 2019 against 'M/s Pantel Technologies Pvt. Ltd.' (Corporate Debtor), same is under challenge on the ground that there was a pre-existing dispute.

2. Learned counsel appearing on behalf of the Appellant – Shareholder referred to email dated 30th September, 2016 and other documents to suggest that faulty materials were supplied by the Operational Creditor, which reads as follows:-

0/5/2019

Zimbra

Zimbra

suman@pantel.in

FW: TRC report of 83AAQ1

From : Suman Chakraborty <suman@pantel.in> Fri, Sep 30, 2016 05:37 AM
Subject : FW: TRC report of 83AAQ1 1 attachment
To : 'Eva' <sales2@wh-elec.com>
Cc : 'Pantel' <manoj@pantel.in>, 'Mukesh Karnataka' <mk@pantel.in>, 'Pantel Vijender Singh' <md@pantel.in>, 'avinash sati' <avinash.sati@pantel.in>, 'liyushu' <lys@wh-elec.com>, 'ken' <ken@wh-elec.com>, 'Ge Feng' <gefeng2728@163.com>, 'ge.feng' <ge.feng@pantel.in>, 'PSPL Production' <production@psplindia.com>

Dear Eva

Please find attached assembly / production report of WH385 (83AAQ1)
We got 886 pcs faulty out of 2620 nos. of kit. We repaired 859 nos at our die before dispatching the material.

You can check eva the fault ration overall for this unit is approx. 33%.
What is this ?????? this is not acceptable at all. We consumed buffer qty as well as all spare parts also to rectify faulty units.

The detailed fault list that we reqorked is attached along with this mail for you reference.

Again we are saying to keep your QC process more stronger . how we can accept this kind of fault ration in new goods and our rework is waste of time and money.

Need replacement parts which we kept separate at our factory

Suman

-----Original Message-----

From: Videsh Swami [mailto:videsh.swami@psplindia.com]

Sent: 30 September 2016 10:02

To: Mukesh Karnataka <mk@pantel.in>; Suman Chakraborty <suman@pantel.in>;

mail.pantel.in/zimbra/vprintmessage?id=C:67448

1/3

3. On the other hand according to learned counsel appearing on behalf of the Respondent (Operational Creditor) by Letter of Guarantee dated 14th February, 2017, the Corporate Debtor confirmed payment without any objection and delay, which is as follows:-

a. info@pantel.it w. www.pantel.it
CIN: U72300DL2010PTC03746J

PANTEL
Grab IT → #Future

LETTER OF GUARANTEE

Dated :- 14th Feb 2017

To,

ANHUI TECHNOLOGY IMP&EXP CO.,LTD
459 WENYI HANGJIANG ROAD, HUBEI, CHINA

Subject: Guarantee for the repayment of Amount payable to ANHUI TECHNOLOGY IMP&EXP CO.,LTD

We, hereby confirm that Pantel Technology Pvt Ltd will pay Amount to ANHUI TECHNOLOGY IMP&EXP CO.,LTD as per Mutual understanding and as per below schedule :-

Invoice No	Invoice Date	Invoice Amount (USD)	Payment Date
AJ16AN3274614	10.11.2016	54,439.16	Transfer by TT as on 17 th Feb 2017
AJ16AN3273458	29.09.2016	196,080.85	Transfer by TT as on 7 th April 2017
AJ16AN3274030	28.10.2016	228,105.11	Transfer by TT as on 20 th May 2017
AJ16AN3274922	28.11.2016	142,555.00	Transfer by TT as on 30 th June 2017
AJ16AN3274948	28.11.2016	168,275.70	Transfer by TT as on 18 th July 2017
AJ16AN3274441	01.12.2016	201,225.71	Transfer by TT as on 28 th Aug 2017

Above mention payments are delay due to demonetisation by the Govt. of India and we are unable to sale out these goods due to Cash crunch in the market.

Now we are here by confirm that payment will be made without objection and we shall not delay the payment, nor shall we oppose it for any reason whatsoever. We shall inform you in writing as soon as payment has been made.

For Pantel Technologies Pvt. Ltd.

(Signature) (Stamp)

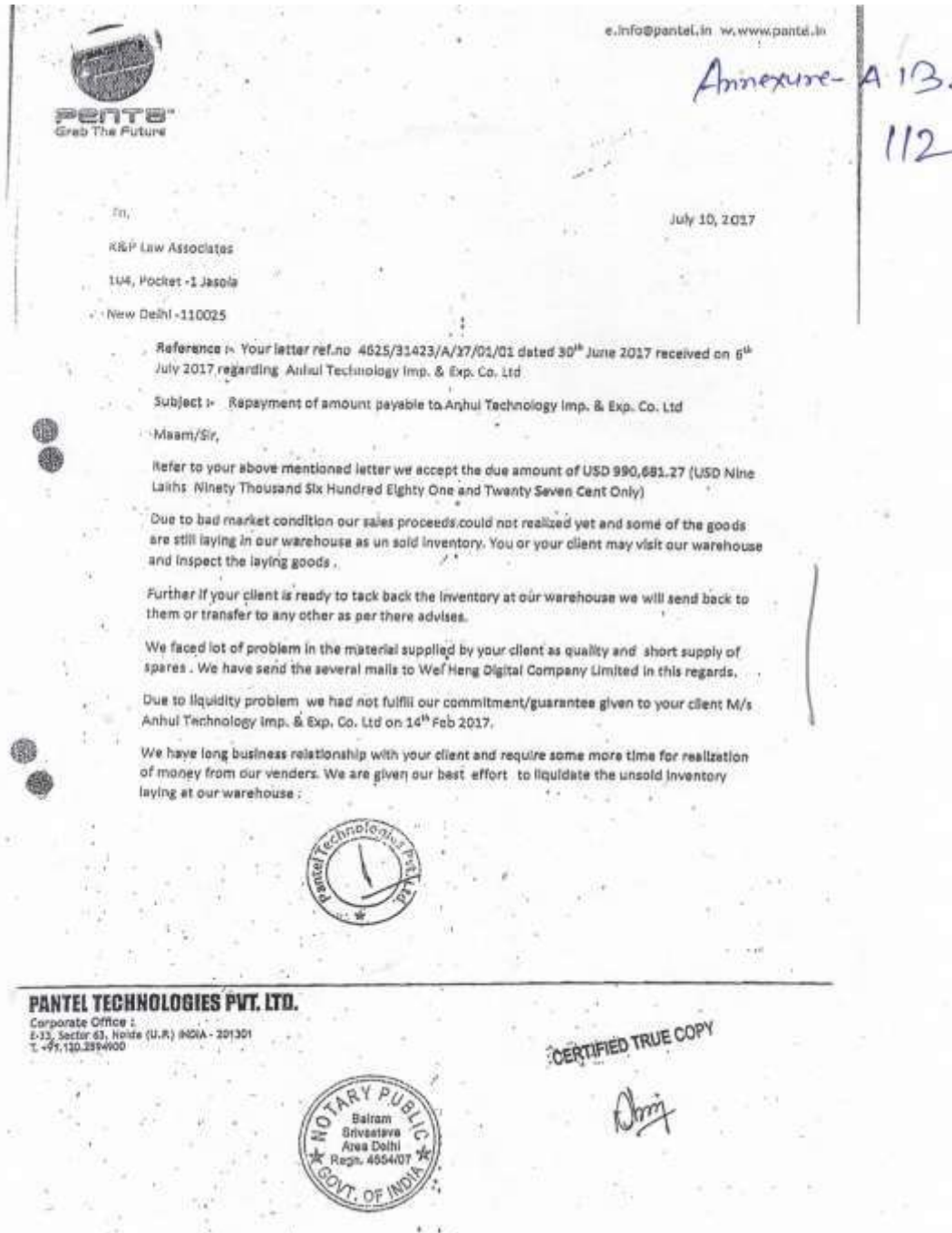
PANTEL TECHNOLOGIES PVT. LTD.
Corporate Office:
3-53, Sector-63, Noida (U.P) INDIA - 201301
T: +91.120.2394900

NOTARY PUBLIC
Salram
Bhavastava
Area Delhi
Regn. 4654/07
GOVT. OF INDIA

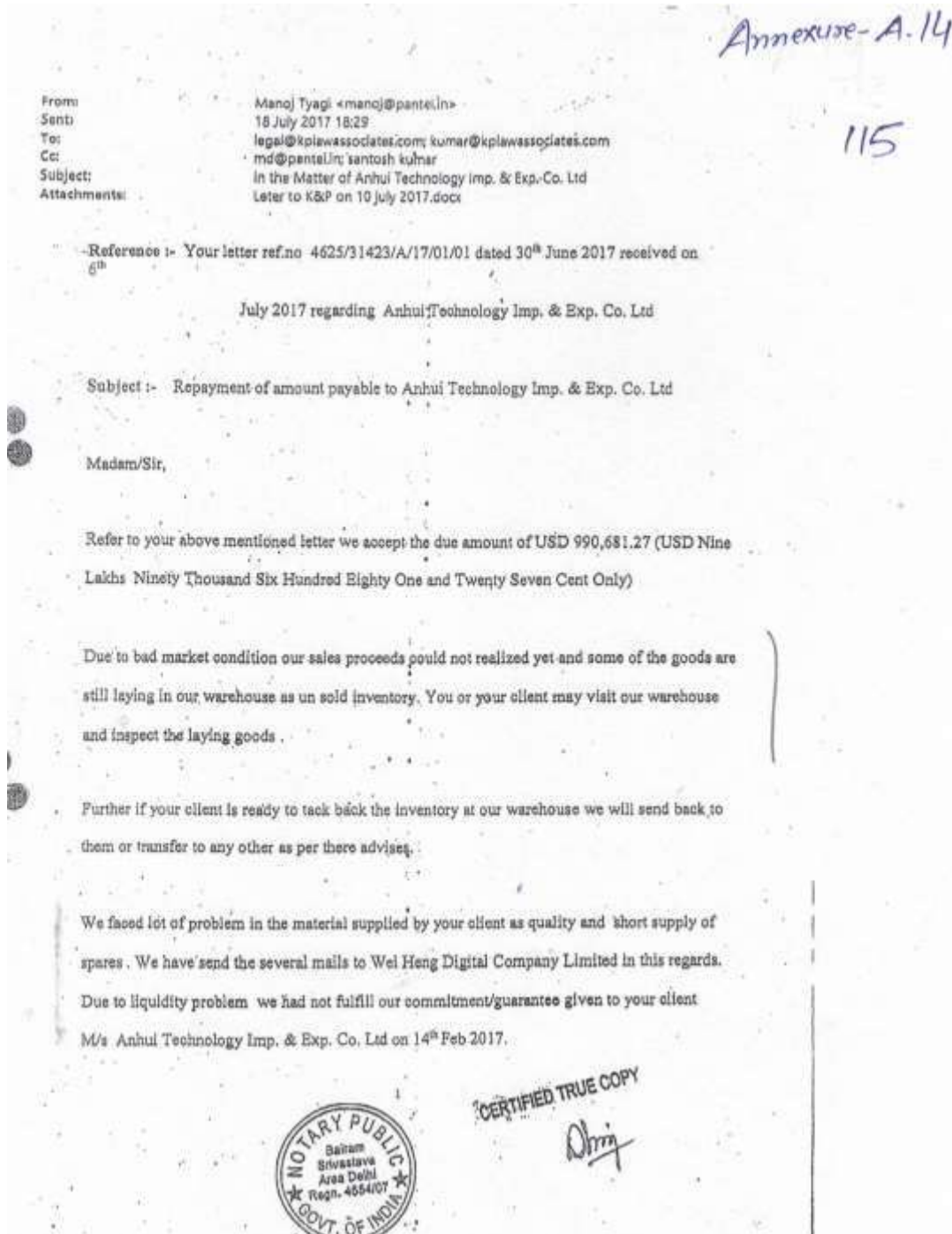
CERTIFIED TRUE COPY

DM

4. Reliance has also been placed by learned counsel for the Respondent on Letter dated 10th July, 2017 to support that the Corporate Debtor was ready to pay the dues, as extracted below:-



5. Another email dated 18th July, 2017 has been cited by learned counsel for the Respondent, which is as follows:-



6. From the record we find that the demand notice under Section 8(1) was issued by the Operational Creditor on 10th June, 2017, the email dated 30th September, 2016 (as quoted above) is much prior to demand notice, which shows that quality material was not supplied and it was substandard. Though by letter dated 14th February, 2017, the Corporate Debtor has said that they will make payment but letter dated 10th July, 2017 shows that sales proceeds could not be realized by the Corporate Debtor because they faced lot of problems in the material supplied by the Operational Creditor for bad quality and short supply.

7. Submission made by learned counsel for the Respondent – Operational Creditor that the Corporate Debtor admitted the claim, cannot be adjudicated by the Adjudicating Authority in an application under Section 9 of I&B Code as it cannot decide the claim or counter claim being not Court of competent jurisdiction. It is required to be seen that prior to issuance of demand notice under Section 8(1) is there any dispute.

8. In the present case there being a pre-existing dispute relating to quality of product supplied by the Operational Creditor referred in the email dated 30th September, 2016, the Adjudicating Authority without deciding the issue whether it was accepted to pay the amount or not is not competent to admit application under Section 9, there being a pre-existing dispute.

9. For the reason aforesaid we set aside the impugned order dated 19th September, 2019 and dismiss the application under Section 9 filed by the Respondent – Operational Creditor. The Corporate Debtor is released from the rigour of Corporate Insolvency Resolution Process and will function through its Promoters and Directors. The Interim Resolution Professional will hand over the assets and records to the Promoter/ Directors immediately. The case is remitted to the Adjudicating Authority to decide the fee and cost incurred by the Interim Resolution Professional and to decide about the person who will pay the amount, preferably within three weeks. The appeal is allowed with aforesaid observations and directions. No costs.

[Justice S. J. Mukhopadhaya]
Chairperson

[Justice Bansi Lal Bhat]
Member (Judicial)

am/gc