

**NATIONAL COMPANY LAW APPELLATE TRIBUNAL, NEW DELHI**  
**Company Appeal (AT) (Insolvency) No. 321 of 2018**

**IN THE MATTER OF:**

**Husqvarna AB (PUBL)**

**...Appellant**

**Vs**

**Allianz Mechanisation India Pvt. Ltd.**

**....Respondent**

**Present:**

**For Appellant: Mr. Amar Dave, Mr. Ajay Bhargava, Mr. Aseem Chaturvedi and Ms. Wamika Trehan, Advocates**

**For Respondent: Mr. Nikhil Nayyar, Mr. Divyanshu Rai and Mr. Naveen Hegde, Advocates.**

**ORDER**

**04.10.2018:** This appeal has been preferred by Appellant (Operational Creditor) against order dated 27<sup>th</sup> April, 2018 passed by the Adjudicating Authority (National Company Law Tribunal), Bengaluru Bench whereby the application under Section 9 of the I&B Code preferred by the Appellant was rejected by the Adjudicating Authority on the ground of 'existence of dispute'.

2. Earlier when the matter was taken up, learned counsel for the Appellant submitted that the Adjudicating Authority has rejected the application preferred by the Appellant on wrong ground of existence of dispute as it failed to notice that the said existence of dispute relates to other supplies and not related to the invoices of which demand notice under Section 8(1) of the I&B Code was issued.

3. On notice, Respondent appeared and filed reply affidavit. Learned counsel appearing on behalf of the Respondent referred to demand notice dated 17<sup>th</sup> July, 2017 issued by the Appellant under Section 8(1) of the I&B Code, relevant portion of which reads as follows:-

(78)

FORM 4  
[REFER CLAUSE (b) OF SUB RULE (1) OF RULE 5]  
FORM OF NOTICE WITH WHICH INVOICE DEMANDING PAYMENT IS TO BE  
ATTACHED  
[UNDER RULE 5 OF THE INSOLVENCY AND BANKRUPTCY (APPLICATION  
TO ADJUDICATING AUTHORITY) RULES, 2016]

Date: 17/07/2017

To,  
Allianz Mechanisation India Private Limited,  
No.138, 4<sup>th</sup> Main, HAL III Stage,  
Indiranagar, Bengaluru- 560 075  
Represented by its Managing Director  
Mr.Bhaskaran

From,  
Husqvarna AB (Publ),  
SE - 561 82  
Husqvarna, Sweden  
Represented by its Authorised Signatory , Rajesh Raghavan

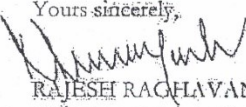
Subject: Notice attached to Invoice Demanding Payment.

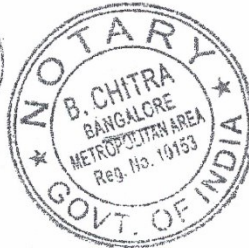
Madam/Sir,

Husqvarna AB, hereby provides notice for repayment of unpaid amount of USD 267,140/-  
(United States Dollars Two Hundred and Sixty Seven Thousand One Hundred and Forty only),  
that is in default as reflected in the invoice attached to this notice.


In the event you do not repay the debt due to us within 10 days of the receipt of this Notice, we  
may file an Application before this adjudicating authority for imitating a corporate insolvency  
resolution process under section 9 of the code.

Yours sincerely,

  
RAJESH RAGHAVAN  
AUTHORISED SIGNATORY  
"Sweets" House , 1<sup>st</sup> Floor,  
Sir P.S Sivasamy Salai ,  
Mylapore,  
Chennai - 600 004  
Tamil Nadu, India .



ATTESTED TRUE COPY

  
B. CHITRA, B.A.L.,LL.B.,  
ADVOCATE & NOTARY PUBLIC  
GOVT. OF INDIA  
# 5/1, 1st Floor, 3rd Cross,  
Eerappa Reddy Layout, Banaswadi Road,  
BANGALORE - 560 033.

WT  
True Copy

4. On the other hand in the Part IV of Form-5 the total amount of debt shown against a number of invoices is as follows:-

Part – IV

	Particulars of Operational Debt	
1.	Total Amount of Debt, Details of the transaction on account of which Debt fell Due, And the date from which Debt fell due	The total amount of debt is USD 2,68,399/- (United States Dollars Two Lakhs and Sixty Eight Thousand and three hundred and Ninety Nine only) against the invoices dated 26.11.2014, 23.02.2015, 06.05.2015 (2), 11.05.2015, 26.05.2015 (2), 30.07.2015, 30.09.2015, 24.09.2015 (2), 28.09.2015 and 16.02.2016.
2.	Amount claimed to be in default and the date on which the Default occurred (Attach the workings for Computation of amount and the dates of default in Tabular Form)	The Default amount is USD 2,68,399/- (United States Dollars Two Lakhs and Sixty Eight Thousand and three hundred and Ninety Nine only) with interest @ the rate of 9.65% per annum as on 31 <sup>st</sup> March, 2017 and the date of default is from 25.01.2015, 24.04.2015, 05.07.2015 (2), 10.07.2015, 25.07.2015, 25.04.2015, 28.09.2015, 08.10.2015, 23.11.2015 (2), 27.11.2015, 30.09.2014 and 16.02.2016 (The Computation of amount default is enclosed with this Application).

Part – V

	Documents, Records and Evidence of Default	
1.	Particulars of the security held, if any, the date of its creation, its estimated value as per the Creditor(Attach a copy of the Certification of the charge issued by the Registrar of Companies, (if the Corporate Debtor is a Company))	NIL
2.	Details of Reservation/Retention of title arrangements (if any) in	NIL

*True Copy*

5. Learned counsel appearing on behalf of the Respondent rightly pointed out that there is a dispute in the invoices shown in the demand notice under Section 8(1) and number of invoices shown in Part IV of Form-5, therefore, the Adjudicating Authority has rightly rejected the claim.

6. We do not accept the submission of the learned counsel for the Appellant that such issue was not made before the Adjudicating Authority, as we have decided the case on merit after perusal of demand notice and Form-5, which are inconsistent as well.

7. We find no merit in this appeal. It is accordingly dismissed.

[Justice S. J. Mukhopadhaya]  
Chairperson

[Justice Bansi Lal Bhat]  
Member (Judicial)

*am/gc*