

NATIONAL COMPANY LAW APPELLATE TRIBUNAL, NEW DELHI

Company Appeal (AT) (Insolvency) No. 338 of 2018

IN THE MATTER OF:

Mr. R. K. Jain

...Appellant

Vs

Maheshwari Industries & Anr.

....Respondents

Present:

For Appellants: Mr. Abhishek Puri and Ms. Surbhi Gupta, Advocates.

For Respondents: Mr. Anish Agarwal, Mr. A. Tandon and Mr. Mohit Prasad, Advocates for R-1.

ORDER

24.07.2018: The Appellant – ‘M/s Raghuv eer Urban Construction Company Pvt. Ltd.’ (Corporate Debtor) has challenged the order dated 6th June, 2018 in CP(IB)-1766(MB)/2017, whereby and whreunder application preferred by the Respondent – M/s Maheshwari Industries’ (Operational Creditor) under Section 9 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as ‘I&B Code’) has been admitted, order of moratorium has been passed and Interim Resolution Professional has been appointed.

2. Learned counsel for the Appellant submits that no notice was issued by the Adjudicating Authority on the Corporate Debtor before impugned order dated 6th June, 2018 was passed. However, to find out whether the remand to Adjudicating Authority would be futile or not, we heard the case on merit.

3. Learned counsel appearing on behalf of the Appellant submitted that there is ‘an existence of dispute’. The material supplied by two challans both dated 28.08.2012 were not of the quality asked for, they were neither of Jindal/Zenith mark nor were ERW GI Pipes “C” class as ordered. When it was asked whether any such issue was raised prior to issuance of demand notice under Section 8(1)

by the Respondent on 10.11.2017, learned counsel for the Appellant referred to two letters one dated 01.09.2012 and another dated 08.09.2012, which has been enclosed as Annexure 1 and 3.

4. The Respondents in their reply has specifically pleaded that no such letters were issued or served on the Operational Creditor. They have also alleged that both the letters have been manufactured to make out a case before this Appellate Tribunal. It is specifically pleaded that the letter dated 01.09.2012, which allegedly bears the signature of Mr. Upendra Maheshwari, husband of proprietor of Maheshwari Industries, is not genuine. A copy of PAN card of Mr. Upendra Maeshwari has been placed on record to show his signature. In regard to alleged letter dated 08.09.2012, it is stated that it did not bear signature or acknowledgment from any personnel of the Respondent (Operational Creditor) and purported to have been given to one Mr. Alok.

5. We have gone through the reply submitted by the Corporate Debtor under Section 8(2) dated 23.11.2017, wherein they have referred to demand notice but not referred to so called letters of 01.09.2012 and 08.09.2012, which are alleged to be forged. If the signature of the person contained in letter dated 01.09.2018 is compared with PAN of the said person *prima facie* a case has been made out by the Respondent that it is manufactured document. However, we do not intend to give any final decision with regard to the same.

6. As we find that there was no dispute in existence prior to the issuance of demand notice dated 10.11.2017, we find no ground to remit the case to the Adjudicating Authority on the ground that no notice was given before admission of the case, as it will be futile for all purposes.

7. For the reasons aforesaid we dismiss the appeal with cost of Rs.1/- lakh (Rupees One Lakh Only) to be paid by the Appellant.

[Justice S. J. Mukhopadhaya]
Chairperson

[Justice Bansi Lal Bhat]
Member (Judicial)

am/sk