

NATIONAL COMPANY LAW APPELLATE TRIBUNAL, NEW DELHI

Company Appeal (AT) (Insolvency) No. 715 of 2018

[Arising out of order dated 26th October, 2018 passed by the Adjudicating Authority (National Company Law Tribunal), New Delhi Bench in Company Petition No. (IB)-1106(ND)/2018]

IN THE MATTER OF:

Rajeev K Aggarwal

R/o E-38, FF, Greater Kailash Part-1,
New Delhi - 48.

...Appellant

Vs

1. Panipat Texo Fabs Pvt. Ltd.

Having its Registered Office at
G-3, Industrial Area, Saraswati Vihar,
Panipat, Haryana – 132103.

2. Exclusive Overseas Pvt. Ltd.

31/3203, Beadonpura,
Karol Bagh, New Delhi – 110005.

....Respondents

Present:

For Appellant: Mr. Sanjoy Ghose and Mr. Akshay Goel, Advocates.

J U D G M E N T

BANSI LAL BHAT, J.

Appellant – shareholder of Respondent No.2 namely ‘Exclusive Overseas Pvt. Ltd.’ (Corporate Debtor), being aggrieved of the impugned order dated 26th October, 2018 passed by the Adjudicating Authority (National Company Law Tribunal) New Delhi Bench in (IB)-1106(ND)/2018 by virtue whereof petition filed by Respondent No. 1 – ‘M/s Panipat Texo Fabs Pvt. Ltd.’ as an ‘Operational Creditor’ under Section 9 of the Insolvency

and Bankruptcy Code, 2016 (hereinafter referred to as 'I&B Code') has been admitted, moratorium slapped and Interim Resolution Professional appointed with certain directions, has assailed the impugned order on certain grounds incorporated in the memo of appeal.

2. The factual matrix surrounding the well contoured features of the case reveals that the Operational Creditor supplied polyester staple fibre to the Corporate Debtor in first half of the year 2018 with an amount of Rs.6,56,788/- lying outstanding against the Corporate Debtor as on 31.03.2018 as per the account books maintained by the Operational Creditor. According to the Operational Creditor, the Corporate Debtor paid Rs.1,50,000/- and Rs.1,06,788/- holding back Rs.4,00,000/- which remained unpaid. The Operational Creditor slapped a demand notice contemplated under Section 8(1) of the I&B Code on the Corporate Debtor demanding the outstanding amount of Rs.4 lakhs together with interest. However, the Corporate Debtor failed to comply with the demand of the Operational Creditor paving the way for initiation of Corporate Insolvency Resolution Process at the instance of Operational Creditor, who filed the petition under Section 9 of I&B Code resulting in passage of the impugned order admitting the petition.

3. The Appellant did not question the factum of the 'operational debt' being payable in law. In so far as 'default' is concerned, the only ground urged in this appeal is that the Adjudicating Authority failed to consider that the goods corresponding to the invoice/ bill forming basis of the purported

debt were defective and of inferior quality. It is contended that the factum of quality of goods supplied being defective and substandard was communicated to the Operational Creditor. However, the Appellant could not lay hands upon any communication to substantiate its contention that the Operational Creditor was apprised of the goods supplied being substandard and defective. Even during the course of arguments learned counsel for the Appellant, when asked to refer to any relevant document on record to demonstrate that the Operational Creditor was served with any communication in regard to quality of goods supplied allegedly being substandard or defective, expressed his inability to point out any such communication. In the face of e-mails dated 26.04.2018, 01.05.2018, 05.05.2018, 07.06.2018 and 14.06.2018 emanating from the Operational Creditor besides other relevant documents and there being nothing on record to prima facie demonstrate that the Corporate Debtor has raised the issue of the goods supplied being substandard or defective prior to the service of demand notice upon the Corporate Debtor, the dispute raised before the Adjudicating Authority and even before this court at a belated stage cannot be termed as a pre-existing dispute in terms of the dictum of the Hon'ble Apex Court in *"Innoventive Industries Ltd. Vs. ICICI Bank and Ors."*– (2018)1 SCC 407. The learned Adjudicating Authority has rightly observed that the dispute raised as defence to the triggering of the Corporate Insolvency Resolution Process at the instance of Operational Creditor is just a sham designed to defeat the petition under Section 9 of I&B Code. In absence of even a whisper from the Corporate Debtor suggesting that the goods supplied were defective or did not conform to the agreed standard and

his failure to show any communication emanated from his side intimating the Operational Creditor that the goods supplied were defective or substandard, it should not lie in his mouth that he had raised a dispute which did not warrant admission of the Operational Creditors petition under Section 9 of the I&B Code. Raising of dispute in regard to quality of goods being inferior/substandard or defective for the first time in reply to demand notice or in response to notice served by the Adjudicating Authority would not constitute a prior and pre-existing dispute contemplated under law as a defence to the initiation of Corporate Insolvency Resolution Process, more so when the contemporary record in regard to transactions between the Corporate Debtor and the Operational Creditor at the time of delivery of goods or immediately thereafter does not demonstrate raising of any dispute with respect to quality of goods supplied by the Operational Creditor.

4. In view of the foregoing discussion I am of the considered opinion that the Corporate Debtor has failed to demonstrate that there was a pre-existing dispute in regard to quality and standard of goods supplied by the Operational Creditor rendering the impugned order unsustainable. I find no infirmity in the impugned order. The appeal deserves to be dismissed. The appeal is accordingly dismissed. There shall be no order as to costs.

[Justice Bansi Lal Bhat]
Member (Judicial)

NEW DELHI

27th November, 2018

AM