

NATIONAL COMPANY LAW APPELLATE TRIBUNAL, NEW DELHI

Company Appeal (AT) (Insolvency) No. 99 of 2018

IN THE MATTER OF:

Dinesh Gupta

...Appellant

Vs

Hajura Singh Bhim Singh & Anr.

...Respondents

Present:

For Appellant: Mr. Arun Saxena, Ms. Jayshree Dugar and Ms. Radhika Malik, Advocates.

For Respondents: Mr. Deepankar Sharma, Advocate.

O R D E R

16.07.2018: The respondent 'M/s Hajura Singh Bhim Singh' (Operational Creditor) filed application under Section 9 of Insolvency and Bankruptcy Code, 2016, (for short I&B Code) for initiation of Corporate Insolvency Resolution Process against 'M/s Best Foods Ltd.' (Corporate Debtor), which having admitted by impugned order dated 2nd February, 2018 with direction under Section 14 for imposing moratorium and calling for name for appointing Interim Resolution Profession the present appeal has been preferred by Mr. Dinesh Gupta, Director of the Corporate Debtor.

2. The main plea taken by the Appellant is that there was an existence of dispute between the Operational Creditor and the Corporate Debtor. However, such plea taken by the Appellant was disputed by the Respondent.

3. Learned counsel for the Appellant was asked to refer to document(s) to suggest that there was a pre-existing dispute even prior to issuance of demand notice under Section 8(1). The following facts have been brought to our notice:

4. A demand notice under Section 8(1) was issued by the Operational Creditors initially through an Advocate, which was received by the Corporate Debtor on 25.08.2017, the applicant by reply under Section 8(2) disputed the claim for the first time on the ground that whatever paddy the Operational

Creditor has supplied through the Authorized Agents were different and a proceeding under Section 138 of Negotiable Instruments Act is pending. Another ground was taken that the quality of paddy supplied by the Respondent was inferior.

5. At that stage there was a decision rendered by this Appellate Tribunal that notice under Section 8(1) issued through advocate was not permissible, which has now been reversed by the Hon'ble Supreme Court. In view of earlier decision of this Appellate Tribunal, the Operational Creditor withdrawn his application under Section 9 and again issued demand notice under Section 8(1) on the Corporate Debtor. Thereby we find that the letter dated 30.08.2017 was written by Corporate Debtor by way of reply under Section 8(2) pursuant to the earlier notice.

6. On hearing the parties, as we find that there was no dispute in existence prior to the 1st demand notice issued under Section 8(1) of the I&B Code and the Corporate Debtor disputed the claim about quality only after issuance of 1st demand notice, therefore, after withdrawal of 1st application under Section 9 on technical grounds and issuance of fresh demand notice, the application under Section 9 filed by Respondent was maintainable.

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

[Justice S. J. Mukhopadhaya]
Chairperson

[Justice Bansi Lal Bhat]
Member (Judicial)

am/gc

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