

by impugned order dated 28th August, 2018 rejected the application on the ground of pre-existence of dispute.

Learned counsel appearing on behalf of the Appellant submitted that there was no pre-existence dispute and referred to different documents to suggest that in fact there was no dispute.

Though the Respondent has appeared and filed affidavit. Learned counsel for the Respondent has failed to bring on record any document to suggest that before the issuance of demand notice under Section 8(1), the Respondent had raised any dispute with regard to quality of goods or short supply of goods.

On the other hand, the record suggests a 'High Seas Sale Contract' for import of consignment was made by the Appellant to the 'Corporate Debtor' and the 'Corporate Debtor' cleared the goods directly. The amount due is much more than Rs.1 Lakh. The ground taken by the Respondent is that the sale has not been completed cannot be taken into consideration as admittedly they have received the goods and has not made the payment.

The Adjudicating Authority on wrong assumption of facts and taking into consideration the irrelevant facts erred in holding that there is pre-existence dispute.

For the reasons aforesaid, the impugned order dated 28th August, 2018 is set aside. The case is remitted to the Adjudicating Authority to pass appropriate order after notice to the Respondent.

However, this order will not come in the way of the Respondent to settle the claim with the Appellant.

The appeal is allowed with aforesaid observations and directions.
No costs.

(Justice S.J. Mukhopadhaya)
Chairperson

Ar/g