

NATIONAL COMPANY LAW APPELLATE TRIBUNAL, NEW DELHI

Company Appeal (AT) (Insolvency) No. 631 of 2018

IN THE MATTER OF:

Gandhar Oil Refinery India Ltd.

...Appellant

Vs

Sapphire Equities Pvt. Ltd.

....Respondent

Present:

**For Appellant: Mr. Nithin Saravanan, Ms. Arunima Singh and
Ms. Priyadarshini, Advocates.**

For Respondent:

ORDER

15.03.2019: The Appellant supplied material to Respondent. Subsequently, he issued demand notice under Section 8(1) of the I&B Code for default of payment. Thereafter, the Appellant filed application under Section 9 of the I&B Code, which having dismissed by the Adjudicating Authority (National Company Law Tribunal), Kolkata Bench, Kolkata, the present appeal has been filed.

2. Learned counsel appearing on behalf of the Appellant submitted that out of Rs.1 crore amount which was to be paid, cheque of Rs.60 Lakh was bounced, which was not paid by the Corporate Debtor. It is also submitted that the tracking report of India Post shows that demand notice under Section 8(1) notice was served on the Respondent, However, the Adjudicating Authority has not considered the same and rejected on the ground that no amount is payable; demand notice under Section 8(1) was not served and there is an existence of dispute.

3. Learned counsel referred to email dated 10th December, 2016 issued much prior to the demand notice under Section 8(1) to suggest that there is existence of dispute, which reads as follows:-

“On 10-Dec-2016, at 1:00 PM, Dinesh Singhania

<dkssinghania1957@gmail.com> wrote:

Mr. Naresh,

I am in receipt of your mail in which you have mentioned that Rs.2.78 cr is yet to be paid but our due is only 1 cr, discount of 1.76 cr was given by Mr. Kunal for bad quality material.

I request you that please conform the same on our mail.”

4. From the said letter, we find that the Appellant informed that Rs.2.78 Crore was payable. In reply to which by aforesaid email the Respondent intimated that only 1 Crore is due after discount of Rs.1.76 Crore for bad quality material. From the aforesaid email it is evident that there is no dispute with regard to Rs.1 Crore and there could not be held existence of dispute on the amount claimed by the Appellant. Learned counsel for the Appellant brought to our notice that out of Rs.1 Crore, Rs.40 Lakhs was paid and cheque for Rs.60 Lakhs were bounced. Thus, we find that default with regard to the payable amount, for which application under Section 9 was filed, is not disputed. Further, learned counsel for the Respondent has admitted that demand notice under Section 8 (1) was served on the Corporate Debtor.

5. In the circumstance, we hold that the Adjudicating Authority wrongly rejected the claim and in absence of any dispute with regard to claimed amount of Rs.60 Lakhs, the application under Section 9 was maintainable. Further, the demand notice under Section 8(1) having served and the amount having not paid by the Corporate Debtor, it was a fit case for admission.

6. For the reasons aforesaid, we set aside the impugned order dated 8th August, 2018 passed by the Adjudicating Authority (National Company Law Tribunal), Kolkata Bench in CP(IB) No. 105/KB/2018 and remit the matter to the Adjudicating Authority for admission of application under Section 9 and initiation of Corporate Insolvency Resolution Process after notice to the Respondent. However, it will be open to the Respondent to settle the claim in the meantime.

[Justice S. J. Mukhopadhaya]
Chairperson

[Justice A. I. S. Cheema]
Member (Judicial)

am/gc