

**NATIONAL COMPANY LAW APPELLATE TRIBUNAL, NEW DELHI**

**Company Appeal (AT) (Insolvency) No. 753 of 2018**

**IN THE MATTER OF:**

**Trade Affairs**

**...Appellant**

**Vs**

**Borkar Colorpacks Pvt. Ltd.**

**...Respondent**

**Present:**

**For Appellant: Ms. Shruti Iyer and Mr. Anandh K., Advocates.**

**For Respondent:**

**ORDER**

**18.03.2019:** The Appellant (Operational Creditor) filed application under Section 9 of the I&B Code which has been rejected by the Adjudicating Authority (National Company Law Tribunal), Mumbai Bench by impugned order dated 15<sup>th</sup> October, 2018.

2. Learned counsel appearing on behalf of the Appellant submits that there is no existence of dispute and the Adjudicating Authority cannot decide dispute raised by the Respondent subsequent to the issuance of demand notice under Section 8(1) of the I&B Code. Referring to the Advocate's Reply dated 2<sup>nd</sup> November, 2017, it was submitted that so called 'various disputes' with regard to the material supplied as mentioned by Respondent were never highlighted nor any dispute has been raised. About the quality of materials supplied the letter dated 2<sup>nd</sup> November, 2017, as referred above reads as follows:-

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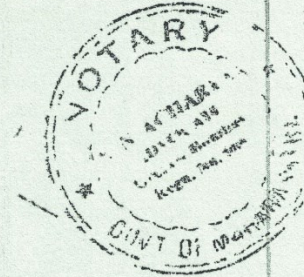
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*Adv. Mahesh Amonkar*

T-1, 3<sup>rd</sup> floor, "Sindur Apartments", S. V. Road.  
Above ICICI Bank, Near Junta House, Panaji Goa. 403001.  
Tel: 2221006. Cell: 9822482048. Email: jatin.goa@gmail.com

Date: 2.11.2017.

To,  
Shri Aalok Borkar,  
Director,  
M/s Borkar Colorpacks Pvt. Ltd. (Unit-I),  
Shed No.D2-31,  
Margao Industrial Estate,  
St. Jose De Areal,  
Nessai, Curtorim-Goa.

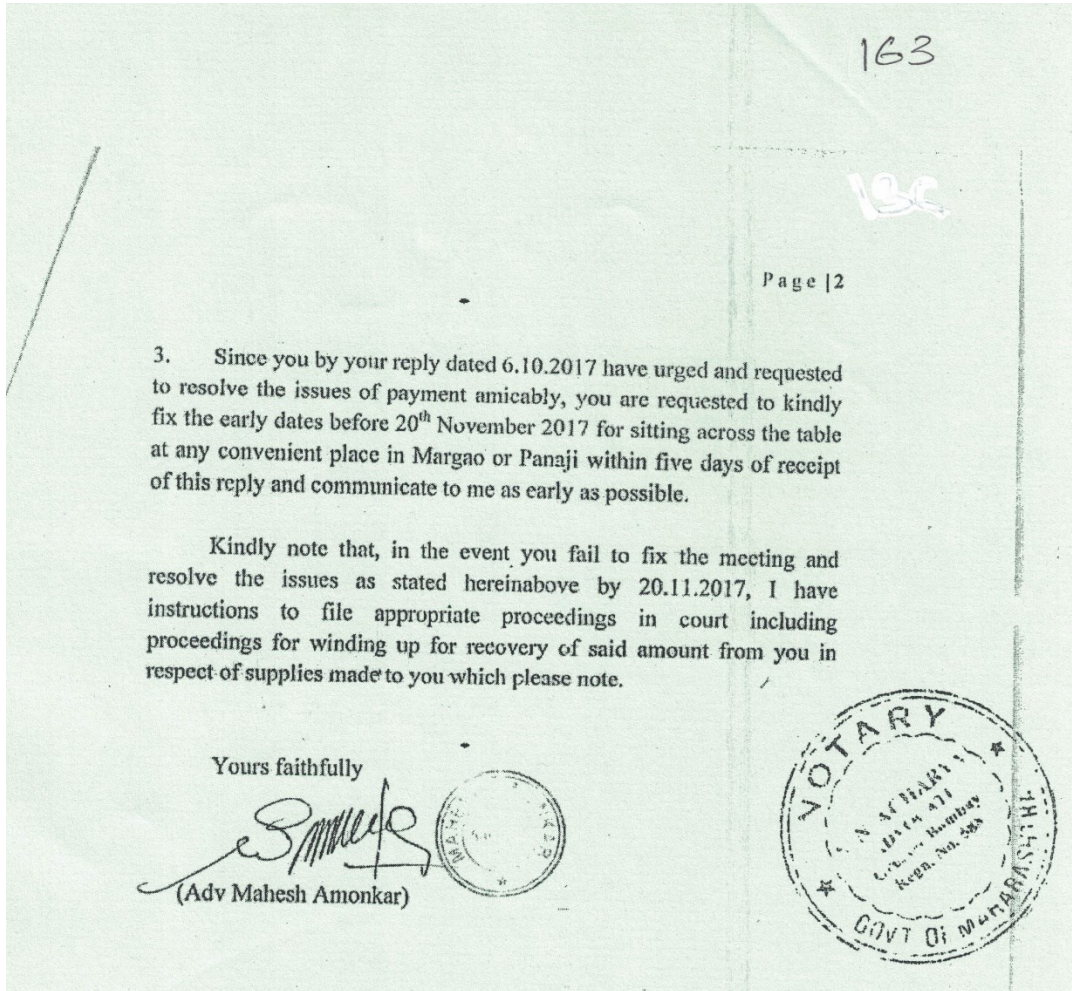


Sir,

I received your reply dated 6.10.2017 to my notice dated 29.9.2017 issued by me to you under the instruction and on behalf of my client M/s Trade Affairs and the same was perused by my client and under his instruction and on his behalf I have to reply to your said reply dated 6.10.2017 as under:

1. My client denied that, there have been various disputes in respect of the material supplied by my client and that you have highlighted the said disputes to my client. My client submits that, at no of time since the time said supplies as mentioned in my earlier notice dated 29.9.2017 were made any complaint or dispute was raised by you in respect of material supplied to you. My client states that, this is an lame excuse or after thought idea being raised by you to avoid payment.

2. My client states that, in fact by your several emails you accepted your liability in respect of said supplies made to you and that you have been just asking for time for payment without showing any intention to make payment and therefore my client was constrained to issue notice dated 29.9.2017.



3. In the present case we find that the demand notice under Section 8(1) was issued by Appellant on 11<sup>th</sup> January, 2018 and prior to the same, Advocate on behalf of the Corporate Debtor in reply to the notice given by the Appellant, by letter dated 6<sup>th</sup> October, 2017, intimated that the Corporate Debtor has denied the pending amount and there have been various disputes in the material supplied by the Appellant. The copy of the letter dated 6<sup>th</sup> October, 2017 reads as follows:-

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**BORKAR COLORPACKS PVT. LTD.**

Regd. Off.: Alankar Bldg., Dr. Martias Dias Road,  
Malbhat, Margao, Goa - 403 601  
Tel. : (0832) 2701808 Fax : (0832) 2702496  
Email : bcplgoa@borkarcolorpack.com

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Date: 06.10.2017

To,  
Adv Mahesh Amonkar  
T-1, 3<sup>rd</sup> floor, Sindur Apartments  
SV Road, Above ICICI Bank  
Near Junta House, Panaji  
Goa- 403001

Dear Sir

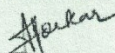
Subject: Your legal notice sent to us dated 29.09.2017

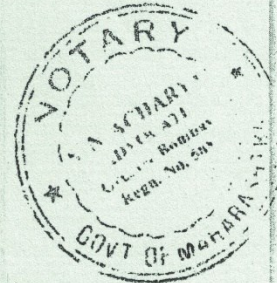
We are in receipt of your legal notice sent to us for your client M/s Trade Affairs dated 29<sup>th</sup> Sept 2017, sent to us 5<sup>th</sup> October 2017 and delivered on 6<sup>th</sup> October 2017.

We are surprised to note the content of your notice. We do not agree with the amount shown by you as pending from our side. There have been various disputes in the material supplied which has been highlighted to your client earlier as well.

We urge you to kindly ask your client to resolve the pending disputes and reconcile the pending amount so that we can then close the dispute and resolve the issues amicably.

For BORKAR COLORPACKS PVT LTD

  
Aalok Borkar  
Director



4. Learned counsel appearing on behalf of the Appellant submits that no dispute had been raised by the 'Corporate Debtor' with regard to supply of materials and highlighted in letter dated 6<sup>th</sup> October, 2017. However, as we find that by letter dated 6<sup>th</sup> October, 2017, the Corporate Debtor has highlighted that there are various disputes about supply of material, and the said letter was issued much prior to the issuance of Section 8(1) notice, we are not inclined to interfere with the impugned order. In absence of any merit, the appeal is dismissed. No costs.

[Justice S. J. Mukhopadhaya]  
Chairperson

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

*am/gc*