

NATIONAL COMPANY LAW APPELLATE TRIBUNAL, NEW DELHI

Company Appeal (AT) (Insolvency) No. 321 of 2017

IN THE MATTER OF:

J.P. Engineers Private Limited

...Appellant

Vs.

Murti Udyog Limited

...Respondent

Present: For Appellant: - Mr. Sharad Tyagi, Advocate.

For Respondent: - Mr. Ajay Kohli, Advocate.

ORDER

19.04.2018- This appeal has been preferred by the Appellant against the order dated 8th November, 2017 passed by the Adjudicating Authority (National Company Law Tribunal), New Delhi Bench, New Delhi, whereby and whereunder the application preferred by the Appellant under Section 9 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as "I&B Code") has been rejected on the ground that the Respondent has raised dispute with sufficient particulars.

2. Learned counsel for the Appellant submitted that the demand notice under sub-section (1) of Section 8 was issued on 13th June, 2017. Thereafter, the amount having not paid, the application under Section 9 of the 'I&B Code' was filed on 13th September, 2017. The Respondent

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thereafter filed suit on 12th December, 2017 i.e. much after filing of the application under Section 9 of the 'I&B Code' which cannot be taken into consideration to hold that there is an 'existence of dispute'.

3. The Respondents have filed reply and further affidavit and taken plea that the amount as was due was already paid to the Appellant by cheques, the details of which were brought to the notice of the Adjudicating Authority. However, such submission has been disputed by the Appellant. According to the Appellant, the Chartered Accountant has certified that the amount has not been paid.

4. Admittedly, there is no 'existence of dispute' relating to supply of goods or its quality as were supplied by the Appellant. Therefore, it cannot be stated that there is an 'existence of dispute'. However, what we find that the Respondent has disputed the debt as has been claimed by the Appellant. According to them, they have already paid and satisfied the claim amount by making payment through cheques.

5. The scheme of the 'I&B Code' fell for consideration before the Hon'ble Supreme Court in ***"Innoventive Industries Limited V/s. ICICI Bank & Anr.— (2018) 1 SCC 407"***, wherein the Hon'ble Supreme Court taking into consideration the provisions of the Code held that the 'Corporate Debtor' is entitled to point out that default has not occurred

in a sense that the 'debt', which also may include a disputed claim, is not due.

6. In the present case, the Adjudicating Authority having noticed that the Respondent has satisfied with the evidence that there is no default on the part of the Respondent and the 'debt' is not due, we find no ground to interfere with the finding of the Adjudicating Authority.

The appeal is accordingly dismissed. No cost.

(Justice S.J. Mukhopadhaya)
Chairperson

(Justice Bansi Lal Bhat)
Member(Judicial)

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