

NATIONAL COMPANY LAW APPELLATE TRIBUNAL, NEW DELHI

Company Appeal (AT) (Insolvency) No. 394 of 2018

IN THE MATTER OF:

M/s. Daya Engineering Works Pvt. Ltd.

...Appellant

Vs.

M/s. UIC Udyog Ltd.

...Respondent

Present: For Appellant: - Mr. Rohit Choudhary and Ms. Ankit Patnaik, Advocates.

ORDER

26.07.2018— The Appellant- ‘M/s. Daya Engineering Works Pvt. Ltd.’ invested money with ‘M/s. UIC Udyog Ltd.’ for supplying of materials. The materials valued Rs. 4,02,33,473/- (Rupees Four Crore Two Lakh Thirty-Three Thousand Four Hundred Seventy-Three Only) were supplied but material of the balance amount Rs. 12,09,443/- (Rupees Twelve Lakh Nine Thousand Four Hundred Forty-Three Only) was not supplied.

2. According to the Appellant, the Respondent is liable to pay back the balance amount of Rs. 12,09,443/- with @ 24% interest.

3. With the aforesaid claim, the Appellant filed an application under Section 9 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as ‘I&B Code’). The Adjudicating Authority (National Company

Contd/-.....

Law Tribunal), Kolkata Bench, Kolkata, by impugned order dated 16th May, 2018 rightly held that the Appellant do not come within the meaning of the 'Operational Creditor' and rejected the application.

4. During the submission, learned counsel for the Appellant submitted that the Respondent- 'Corporate Debtor' has retained the amount for its commercial purpose and used the same and, therefore, the Appellant has claimed interest at the rate of 24% per month. Submission is made that the Appellant in such case should be treated to be a 'Financial Creditor' within the meaning of Section 5(7) read with (8) of the 'I&B Code'. However, we are not expressing any opinion with regard to such issue as to whether Appellant is 'Financial Creditor' or not, as the claim was not filed under Section 7 of the 'I&B Code'. If the Appellant feels that it was the case under Section 7 and wrongly filed application under Section 9 it may move in accordance with law before the Adjudicating Authority who may decide such claim independently uninfluenced by the impugned order dated 16th May, 2018.

5. The Appeal stands disposed of with aforesaid observations. No cost.

(Justice S.J. Mukhopadhaya)
Chairperson

(Justice Bansi Lal Bhat)
Member(Judicial)

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