

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

**Company Appeal (AT) (Insolvency)No.638 of 2018**

**IN THE MATTER OF:**

**Jindal Steel & Power Ltd.**

**.....Appellant**

**Vs.**

**Mittal Corporation Limited**

**.....Respondent**

**Present :**

**For Appellant:**

**Mr. Anshuman Sharma, Ms. Priyal Chaturvedi, Mr. Vishesh Dhundia, Advocates**

**For Respondents:**

**Mr. Virender Ganda, Senior Advocate with Mr. Hitesh Sachar, Ms. Namita Jose, Mr. Anand Singh Sengar, Advocates**

**O R D E R**

**16.05.2019** - The Appellant – '**Jindal Steels & Power Ltd.**' filed an application u/s 9 of the Insolvency & Bankruptcy Code, 2016 ('I&B' Code, for short) against Mittal Corporation Limited. By impugned order dated 31<sup>st</sup> August, 2018, the Adjudicating Authority (National Company Law Tribunal), Mumbai Bench, dismissed the application on the ground of 'pre-existing dispute'.

2. Learned Counsel appearing on behalf of the Appellant submits that the Respondent by letter dated 30<sup>th</sup> November, 2016 raised frivolous disputes although they have admitted about receipt of goods and non-payment of dues.

3. Referring to the said letter dated 30<sup>th</sup> November, 2016, it is submitted that the Respondents having received the goods and consumed at the agreed rate there arises no question of dispute or controversy and sale price being a debt is payable for which Respondent defaulted.

4. According to learned counsel for the Appellant, the Adjudicating Authority travelled beyond the scope of Insolvency & Bankruptcy Code ('I&B' Code), 2016 and engaged into fact finding on the conduct of third parties which cannot be taken into consideration in the present application which was filed u/s 9 of the Insolvency & Bankruptcy Code ('I&B' Code), 2016. The Respondent having received and consumed the goods for default it was incumbent on the Adjudicating Authority to admit the application.

5. Learned Counsel appearing on behalf of the Respondent also referred to the letter dated 30<sup>th</sup> November, 2016 to suggest pre-existing dispute.

6. It is further submitted that the MS Billets were supplied in much higher price than the original price as was offered. It is also alleged that delay in supply of materials took place because of non-compliance of various provisions by the Appellant due to which the Respondent suffered and has raised counter claim.

7. We have heard the parties and perused the records. Admittedly the Demand Notice u/s 8(1) Insolvency & Bankruptcy Code ('I&B' Code), 2016 was issued on 13<sup>th</sup> September, 2017.

8. From the record, we find that much prior to issuance of Demand Notice, the correspondence was going on relating to outstanding amount in terms of purchase order dated 7<sup>th</sup> March, 2016 as was amended on 12<sup>th</sup> March, 2016.

9. Pursuant to a notice of Appellant through the Lawyer's Office, the Advocate for the Respondent ('Corporate Debtor') raised dispute by letter dated 30<sup>th</sup> November, 2016 which reads as follows:-

EXHIBIT - 'H'

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**SATISH AGRAWAL**

Flat B 105-6, Kachnar Sambhar  
Beside Anand Cinema  
Napier Town  
JABALPUR - 482001

ADVOCATE

Phone - 2410203(0761)  
4035665(0761)  
Mobile - 9425154600  
Dated: 30/11/2016

Ref. No.: 1731

To,  
RRG & Associates  
Law Offices  
C-14, Lower Ground Floor  
Chirag Enclave  
Greater Kailash Part - 1  
New Delhi 110048

Sub: Demand of outstanding amount in terms of Purchase  
Order Dated 07/03/2016 amended on 12/03/2016  
Ref: Your notice dated 08/11/2016 (Received on 15/11/2016)

Dear Sir,

I have been instructed by my client M/s Mittal Corp Limited and its directors and have been authorised to send you following reply to above referred notice, which you may note as under;

1. At the outset please note that there is nothing involved in the matter / transaction which can be termed as criminal and / or which requires criminal jurisprudence of law to be switched on. It seems you have used the word criminal action towards the end of the notice is to scare my clients and extract the alleged outstanding amount, which is actually not due.



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2. Further at the outset please note and appreciate that my clients have not been able to understand the object of sending notices to directors and others. The only object seems to be to implicate the directors and then extract money from them. None of the individual named in the notice has had any personal role to play in compliance of purchased order. This is a very old trick to involve unwanted persons and then misuse the process of law.

**True Facts And Circumstances Involved in The Matter:**

3. Mittal Corp Limited (MCL) had booked order of 5000 MT (apprx.) for supply of wire rods. To execute these orders Mittal Corp had placed orders for purchase of 4700 MT Billets to JSPL.

**Amendment in Purchase Order:**

4. Based on the Offer received on 05/03/16 from JSPL, MCL have issued two PO (No. 11 & No. 12) for purchase of 4700 MT of Billets on 07/03/16. However, JSPL deferred from their offer and increased the price of Billets.
5. As Mittal Corp had already taken orders from its customer, to fulfil its commitment it agreed for price revision under pressure on 10/03/16. Revised purchase orders were issued on 12/03/16 for supply of billets in March/April 2016.

**Delay in supply of material:**

6. As per the terms of PO dated 07/03/16 (amended on 12/03/16) the material was to be supplied during March/April 2016.
7. Immediately on the acceptance of terms of PO by JSPL, on 14/03/2016 MCL (through MCL Global Steel Private Limited, its group company) had remitted Rs. 50 lakhs

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against PO No. 11 & Rs. 75 lakhs against PO no. 12. Further till 04/04/16 MCL had remitted Rs. 5.76 Crores (Including Payment of Rs. 3.35 Crores made by MCL Global). Till 31/05/16 advance payment of Rs. 2.07 Crores was lying with JSPL without any respective supply thereby blocking the funds.

8. Through its mail dated 18/03/16 JSPL had informed that 800 MT billets were ready for lifting which in fact was not more than apprx. 300 MT (including 283 MT lifted by MCL Global) which is evident from contents of email dated 18/03/16 sent by MCL to JSPL. It was also mentioned in the mail that the casting of billets was not started by JSPL upon the receipt of advance. MCL started lifting the material and had lifted 350 MT (apprx.) of billets by 31/03/16.
9. Since the advance payment was made and L/c's were opened by banker of MCL, it agreed and accepted all the delay in the supply of billets under pressure with no options left.

**Transportation issues:**

10. As per the terms of PO the material was to be lifted in the lot of 100/200 MT between March/April 2016.
11. Due to unavailability of further material the schedule of lifting by truck was affected as the transporters have diverted their trucks at other location.
12. On 14/04/16, MCL have agreed to lift the balance billets by railway racks, however JSPL had dispatched billets by Racks after 45 days on 31/05/16.
13. Between 18/04/16 to 19/5/16 no material was made available by JSPL for lifting.



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**Sales Order:**

14. Due to delay in supply JSPL had revised its sales order at many instances.

**Negligence of JSPL in negotiating the Bills of Exchange:**

15. Mittal Corp Limited had duly vacated the limit by arranging funds in bank to open the L/c on 22/04/16. Following L/c's were opened by State Bank of Patiala;

S. No.	LC No.	Date of issuance	Amount in Rs. Cr.	Date of Expiry (Negotiating)	Last date of Shipment	Quantity (MT)
1	5089516 LC00002 31	22/04/16 amended on 16/05/16	2.77	21/05/16 amended to 14/6/16	6/05/16 amended to 31/5/16	1000
2	5089516 LC00002 30	22/04/16 amended on 16/05/16	2.21	21/05/16 amended to 14/6/16	6/05/16 amended to 31/5/16	849
3	5089516 LC00002 34	25/04/16 amended on 16/05/16	1.44	10/05/16 amended to 31/05/16	25/05/16 amended to 14/6/16	500
Total			6.42			

16. After 45 days from the date of opening of L/c, the following bills were submitted by JSPL to State Bank of India, Raigarh (negotiating bank) on 06/06/16:- (i)



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JSPL/DFT/16/34611 dated 02/06/16 of Rs. 29085011/- against L/C No. 5089516LC0000231 of Rs. 27665753/- (ii) JSPL/DFT/16/34612 dated 02/06/16 of Rs. 23278993/- against L/c No. 5089516LC0000230 of Rs. 22132603/-

(17.) Since the value of Bills of exchange (BoE) was in excess to the value of L/C opened by State Bank of Patiala, bank had returned the BoE. Subsequent amended BoE were submitted by JSPL after the date of expiry of L/c which is not the fault of MCL.

**Loss in transaction:**

18. Due to various amendments in the offer and sales order by JSPL MCL has paid additional amount to JSPL.
19. MCL had opted for transportation by Truck @ 2200/Ton but under pressure of JSPL and to execute onward supply wire rods at the earliest MCL had lifted material by Railway Rack. Hence, MCL incurred additional freight of Rs. 560/ton i.e. Rs. 14.86 lakhs.
20. The prices of Wire rods had decreased by almost Rs.1500/- MT between the period of order placed and final delivery. Hence MCL has incurred loss of Rs. 50 lakhs (apprx.) due to delay in supply of billets.
21. As MCL was unable to supply wire rods (converted from the Billets supplied by JSPL) as per the order book, it didn't receive the repeat order from its customers and incurred loss in terms of business opportunity as well as Goodwill loss which is irrecoverable.
22. Due to unavailability of Billets in time from JSPL; MCL lost business opportunity for almost 15000MT of MS wire rods in the period April '16 - June'16. Considering minimum profit margin of Rs. 2650/MT it works out to loss of approx Rs. 4 Crores.

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23. Mittal Corp Limited had made payment of Rs. 5 Crores to State Bank of Patiala for vacating the L/c limit. State Bank of Patiala had opened the L/c of Rs. 4.98 Crores on 22/04/15. Till 06/08/16 L/c limit was blocked and not available to company.
24. In the circumstances mentioned above, the alleged claim made by you against my client is denied and same is not recoverable from my clients.
25. Your client has itself engineered the alleged default and alleged overdue to be paid by my client by its own negligent working and not following the basic principles of business, namely (i) changing the terms once committed, come true to the terms finalised (ii) not submitting BoE within the L/c value (iii) not doing amendment in BoE within the L/c validity etc.
26. In the totality of facts and circumstances, I on behalf of my clients call upon you to withdraw the demand notice under advance intimation to my clients. In the event if any action is taken as threatened in the notice under reply, same shall be resisted with full force by my client, which shall be entirely at your client's risk, cost and consequences.

An office copy of this reply has been preserved in my office for further action if required.

Yours Truly  
(Satis Agrawal)  
Advocate

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10. After hearing the parties and going through record, we find that there is a pre-existing dispute with regard to price of the goods which was increased and due to failure of negotiation on the part of the Appellant, the Respondent suffered loss, as alleged.

11. Learned counsel for the Appellant submitted that in terms of the amendment in purchase order, there is no dispute but we find that the Lawyer's Notice dated 30<sup>th</sup> November, 2016 has also dealt with the amended Purchase Order dated 12<sup>th</sup> March, 2016.

12. As all the aforesaid disputes cannot be decided by the Adjudicating Authority or this Appellate Tribunal, with regard to pre-existing dispute, we hold that the application filed by the Appellant u/s 9 of the 'I&B Code' was not maintainable.

13. However, our observations will not come in the way of Appellant to move before the Competent Jurisdiction / Forum for appropriate relief.

14. The appeal is dismissed with the aforesaid observations. No costs.

[Justice S. J. Mukhopadhaya]  
Chairperson

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

ss/gc