

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
NEW DELHI

Company Appeal (AT) (Insolvency) No. 505 of 2018

IN THE MATTER OF:

Swastik Enterprises

...Appellant

Versus

**Hajee A.P. Bava Company
Constructions Pvt. Ltd.**

...Respondent

Present:

For Appellant : Mr. G.K. Jain, Chartered Accountant

For Respondent : Mr. Sunav Rastogi, Advocate

ORDER

27.09.2018 The 'Operational Creditor' filed an application under Section 9 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as the '**I&B Code**') for initiation of 'corporate insolvency resolution process' against the respondent 'Hajee A.P. Bava & Company Constructions Pvt. Ltd'. The respondent on appearance brought to the notice of the Adjudicating Authority (National Company Law Tribunal), Bengaluru Bench, Bengaluru that the outstanding amount which was due to the 'Operational Creditor' was offered a sum of remaining amount Rs. 8,03,317/- which they refused to accept. In this way, the Adjudicating Authority by the impugned order dated 11th July, 2018 while rejected the application directed the respondent to pay the remaining amount of Rs.8,03,317/- if it is already not paid. Learned counsel appearing on behalf of the appellant submits that there was no document on record about payment of any amount and the appellant denied the claim of Rs. 46,69,915 as was demanded by demand notice dated 11th January, 2018. No settlement has been arrived at for the same. Reliance has been placed on the impugned order

to submit that the wrong statement has been made which has been accepted that a sum of Rs. 20 lakhs was paid without interest.

Pursuant to the earlier order, the respondents filed additional affidavit enclosing the copy to suggest that the amount of Rs. 8,03,317/- has already been paid in the account of the appellant. The appellant in its pleadings has also so accepted. The amounts were remitted in the bank through RTGS initially for a sum of Rs. 5 lakhs on 16th March, 2018 and another sum of Rs. 15 lakhs was remitted on 28th March, 2018. Apart from this Rs. 20 Lakhs, further amount of Rs. 8,03,317/- has been deposited by respondent pursuant to the order of the Adjudicating Authority. Thus, total amount of Rs. 28,03,317/- has already been deposited in the account of the appellant. Now the learned counsel appearing on behalf of the appellant raised the question of interest but it cannot be decided whether any further amount is payable or not in a petition under Section 9. In the aforesaid background, there being a doubt about 'debt and default', the Adjudicating Authority has rightly rejected the application under Section 9 of the I&B Code. We find no merit in this appeal, it is accordingly dismissed. No cost.

[Justice S.J. Mukhopadhaya]
Chairperson

[Justice Bansi Lal Bhat]
Member (Judicial)

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