

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
NEW DELHI

Company Appeal (AT) (Insolvency) No. 118 of 2017

IN THE MATTER OF :

**United Motors Heavy Equipment
Pvt. Ltd.**

...Appellant

Versus

Sundaram Industries Pvt. Ltd.

...Respondent

Present: For Appellant: Mr. Vijayan, Mr. Tejaswai BR and Mr. Sujit Kesheri, Advocates.

For Respondent: Mr. Arun Kathpalia, Senior Advocate with Mr. Anirudh Wadhwa, Mr. Chandramouli Prabhakar and Mr. Hiresh Chaudhary, Advocates.

ORDER

19.09.2017 – The appellant-‘Operational Creditor’ filed application under section 9 of the Insolvency and Bankruptcy Code, 2016 after serving notice under section 8 on the respondent-‘Corporate Debtor’. Learned Adjudicating Authority by impugned order dated 15th June, 2017, taking into consideration the fact that there is a dispute in existence, relying on decision of this Appellate Tribunal in “***M/s. Kirusa Software Private Limited V. Mobilox Innovations Private Limited***”, rejected the application.

2. Learned Counsel appearing on behalf of the appellant submitted that there was no dispute in existence and suit was filed after service of Section 8 notice only to save the period of limitation.

3. Notice was issued on Respondent-‘Corporate Debtor’ to state whether any dispute was in existence prior to issuance of Section 8 notice.

4. In reply to the notice, the respondents in their counter affidavit enclosed e-mail dated 15th November, 2011 which shows that the engineering department of one John Bin Technology Corporate, to whom the supply was made through the ‘Corporate Debtor’ who raised objection regarding quality of 30 solid tyres supplied by the appellant as materials were substandard.

5. Learned Counsel appearing on behalf of appellant referred to one or other record to suggest that subsequently they have resolved the dispute about the quality of goods were discussed, but there being an existence of dispute, we are not inclined to interfere with the impugned order.

6. In absence if any merit, the appeal is dismissed. However, the order passed by the Adjudicating Authority or this Appellate Tribunal will not come in the way of appellant for decision by Court of competent

jurisdiction before which the suit preferred by appellant is pending. No cost.

(Justice S.J. Mukhopadhaya)
Chairperson

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

(Balvinder Singh)
Member(Technical)

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