

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

**Company Appeal (AT) (Insolvency) No. 334 of 2020**

**IN THE MATTER OF:**

**M/s. Suri Rajendra Rolling Mills**

Through its Partner

Shri Saroj P Jain,

Shed No. 183, GVMM Industrial Estate,

Odhav Ahmedabad-382415, Gujarat

**...Appellant**

**Versus**

**M/s. Bengani Udyog Pvt. Ltd.**

30, Cotton Street, 2<sup>nd</sup> Floor, Kolkata

West Bengal – 70007

**...Respondent**

**Present:**

**For Appellant: Mr. Rajendra Beniwal and Mr. Kumar Sumit,  
Advocates.**

**For Respondent: None.**

**ORDER**  
**(Virtual Mode)**

**11.02.2021** Heard Learned Counsel for the Appellant at Admission stage.

**2.** The Present Appeal arises out of Impugned Order dated 06<sup>th</sup> January, 2020 (Annexure A/1, Page 22) which reads as under:

*“Ld. Counsel for the Operational Creditor appears.*

*Ld. Counsel for the Corporate Debtor appears.*

*An application was filed by the Operational Creditor under Section 9 of the I & B Code, 2016 for initiating Corporate Insolvency Resolution Process against the Corporate Debtor claiming an amount of Rs. 5,61,000/- for default in payment. This Application has come up for hearing today.*

*Ld. Counsel for the Corporate Debtor filed objection and submitted that the Application is not maintainable on the ground that similar application was filed by the self same Operational Creditor which is withdrawn vide order dated 04/09/2018.*

*A look at the order demonstrates that this Applicant was permitted to withdraw a similar application filed for the self same cause of action without liberty to file fresh application. As such, the application is not maintainable. Hence dismissed.*

*However, no order as to cost.”*

**3.** It appears that the Appellant had earlier issued Notice under Section 8 of Insolvency and Bankruptcy Code, 2016 (I&B, Code in short) on 04<sup>th</sup> April, 2018 (See Diary No. 22727- Additional Documents- Page 30). Thereafter on 21.04.2018, the Corporate Debtor M/s. Bengani Udyog Pvt. Ltd. had sent Reply (Annexure A/2- Additional Documents- Page 48) raising disputes that the concerned MoU was forcibly got executed and that the dues were already recovered and claimed that the Appellant had siphoned funds and goods and stocks. Reference was also made to Arbitration Proceedings as well as Civil Suit No. 1234 of 2016 to restrain Appellant from entering factory and also filed Criminal Case No. 218 of 2016 claiming fraud.

**4.** The Appellant however filed C.P. (IB) 1026/KB/2018 (Page 24 read with Annexure A/1 of Additional Documents) claiming Operational Dues. The said Application later on came to be withdrawn on 04<sup>th</sup> September, 2018 as per Annexure A/3, Page 31 which order reads as under:

*“Ld. Counsel for the Operational Creditor appears. Ld. Counsel for the Corporate Debtor also appears. He seeks*

*time to file Vakalatnama. It is to be filed along with the Board Resolution during the course of the day. Ld. Counsel for the Operational Creditor submitted that he has instructions from the Corporate Debtor to withdraw the matter. Permission to withdraw the matter is granted. Matter stands withdrawn and disposed off.”*

**5.** The Appellant says that it had subsequently sent another Notice under Section 8 of I&B, Code on 25<sup>th</sup> January, 2019 as per Annexure A/4- Page 32 and the Respondent appears to have replied even to this Notice on 08<sup>th</sup> February, 2019 (Annexure A/5- Page 37) and referred to the earlier developments and the earlier disputes raised. The Appellant however filed fresh Application under Section 9 of I&B, Code having C.P. (IB) 605/KB/2019 vide Annexure A/6 - Page 44.

**6.** The Learned Counsel for the Appellant is submitting and the Appeal also claims that the Impugned Order is not sustainable as fresh notice under section 8 of I&B, Code was given and thus there was a fresh cause of action. It is stated that when earlier the Application was filed, the Corporate Debtor had told the Appellant that it would settle the dues but subsequently the dues were not settled and hence fresh notice under section 8 of I&B, Code was given and hence there was a fresh cause of action.

**7.** We have gone through the earlier Application under Section 9 which was filed and the new Application which was filed under Section 9 of I&B, Code. Both of the Applications referred to the same amount and similar facts are averred. In the new Application under Section 9 Annexure A/6-Page 47 ‘Statement of Facts’ stated in Paragraph 8 as under:

*“The Petitioner has filed insolvency application u/s 9 of IBC 2016 on 10/05/2018 with NCLT Calcutta bench vide CP (IB) 1026-KB/2018. However, the petitioner has withdrawn the application subsequently in view of that there was no hope of CIRP for corporate debtors the secured creditor has initiated action under SARFAESI Act to get physical possession of the properties of the respondent and will sale under auction. However, no such action taken by the secured creditor. Hence this application was made again.”*

**8.** Considering this, we are not ready to accept the submissions made by the Learned Counsel that the Corporate Debtor had stated that it would settle the dues and because of that the earlier Application was withdrawn. The Learned Counsel for the Appellant referred to earlier Order of withdrawal Annexure A/3 where the Tribunal recorded that “Learned Counsel for the Operational Creditor submitted that he has instructions from the Corporate Debtor to withdraw the matter”. On basis of such noting in the earlier Order (which could even be typing error) the argument is tried to be made that there was offer of settlement. We do not accept such submissions. It would be strange that the Opposite Party gives instructions to the other side and other side on instructions from the Opposite Party withdrawing petition.

**9.** Even if it was to be accepted that any such statement was made, the same was not put on record and the new Application with note 8 as reproduced above does not give any support to the Appellant.

**10.** Even otherwise, when present Application under Section 9 is filed, the earlier Reply Notice which was sent by the Corporate Debtor discloses Pre-existing dispute. The Section 9 Application claims debt relying on Ledger Account  
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of Appellant itself. This read with the Notices on record shows various disputes pre-existing between parties. That being so, even if one is to look into merits in the alternative, the Application under Section 9 does not show that it deserves to be admitted.

**A.** For the above reasons, there is no substance in the Appeal. The Appeal is dismissed.

**B.** The Appellant would be at liberty to pursue remedy, if any, in any other Forum if permissible by Law.

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

**[V.P. Singh]**  
**Member (Technical)**

Basant B./md/