

NATIONAL COMPANY LAW APPELLATE TRIBUNAL, NEW DELHI

Company Appeal (AT) (Insolvency) No. 06 of 2018

IN THE MATTER OF:

Mohan Shivraman Nair

...Appellant

Vs.

M/s. Agarwal Coal Corporation Pvt. Ltd. & Anr.

...Respondents

Present: For Appellant: - Mr. E. Om Prakash, Senior Advocate with Mr. G. Asaorpathy and Mr. M. Anbalagan, Advocates.

For Respondents:- Dr. U.K.Chaudhary, Senior Advocate with Mr. VN Dubey and Mr. Himanshu Vij, Advocates.

O R D E R

23.01.2018- This appeal has been preferred by the Appellant- Mr. Mohan Shivraman Nair, Managing Director of M/s. Sun Paper Mill Limited ('Corporate Debtor') against the order dated 15th November, 2017 passed by the Adjudicating Authority (National Company Law Tribunal), Single Bench, Chennai in Company Petition No. 616/(IB)/CB/2017, whereby and whereunder the application preferred by Respondents- M/s. Agarwal Coal Corporation Private Limited ('Operational Creditor') under Section 9 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as "I&B Code") has been admitted, order of moratorium has been passed and 'Interim Resolution Professional' has been appointed.

Contd/-.....

2. Learned counsel appearing on behalf of the Appellant submitted that there is an 'existence of dispute' between the 'Corporate Debtor' and the 'Operational Creditor' with regard to supply of coal. It is submitted that with regard to supply of coal, instead of supply of "Steam Non-Cooking Coal", the Respondents had supplied 9000 metric tons of "Bituminous Coal", which was brought to the notice of the 'Corporate Debtor' by the Customs Authorities by their show cause notice dated 27th March, 2013. For the said reasons, the payment was withheld by giving intimation to the 'Operational Creditor' by letter dated 6th July, 2013.

3. Learned counsel appearing on behalf of the Respondent- 'Operational Creditor' submits that the dispute as said to be 'in existence' relates to the supply of coal between the period from 18th March, 2012 to 4th February, 2013. In fact, no claim has been made in the petition under Section 9 of the 'I&B Code' in regard to the payment as is due pursuant to earlier agreement. It has been shown that the 'Corporate Debtor' has defaulted in making payment pursuant to 'Two High Seas Sale Agreements' both dated 4th November, 2013, pursuant to which, the 'Corporate Debtor' lifted the coal between November, 2013 to February, 2014.

4. We have heard learned counsel for the parties and perused the

record and find that the dispute as was raised by 'Corporate Debtor' relates to supply of coal during the period of 18th March, 2012 to 4th February, 2013 in respect of which no claim has been filed by the 'Operational Creditor' in the application under Section 9 of the 'I&B Code'. In the application under Section 9 of the 'I&B Code', the details of transactions of account of which the debt fell due has been shown relates to 'Two High Seas Sale Agreements' both dated 4th November, 2013 i.e. relating to purchase of "Non cooking coal in bulk of Indonesia Origin", which was lifted by 'Corporate Debtor' between November, 2013 to February, 2014. In respect of such supply the 'Corporate Debtor' has defaulted in respect of which no dispute has been raised by the 'Corporate Debtor'.

For the reasons aforesaid, we hold that the Adjudicating Authority rightly admitted the application under Section 9 of the 'I&B Code' and there is no ground made out to interfere with the impugned order.

5. 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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