

NATIONAL COMPANY LAW APPELLATE TRIBUNAL, NEW DELHI
Company Appeal(AT) (Insolvency) No. 931 of 2019

IN THE MATTER OF:

Eastern Electrodes & Coke Pvt. Ltd.

3rd Floor, 97C, Harish Mukherjee Road,
Kolkata,
West Bengal – 700 026

...Appellant

Vs

Bhaskar Shrachi Alloys Ltd.

8/1, Middleton Row,
Kolkata,
West Bengal- 700 071

....Respondent

Present:

**For Appellant: Mr. Vikrant Pachnanda and Mr. Nitin Kumar
Chahar, Advocates.**

For Respondent: None.

ORDER

05.02.2020 Heard Mr. Vikrant Pachnanda, learned Counsel for the Appellant- Operational Creditor. The Respondent is not present in spite of service of notice.

2. The Appellant claims that the Appellant was supplying Electro Carbon Paste (in short ECP) and Tamping Paste to the Corporate Debtor and reference is made to the supplies made and Invoices raised in 2014. The Appellant claims that the supplies were duly received by the Corporate Debtor and part payments were also made. It is stated that whenever there was issue in respect of quality, the Appellant, on the basis of result of laboratory test took back the same. The Appeal claims Corporate Debtor arbitrarily refused material and by way of telephone requests and e-mail Corporate Debtor was asked reasons, but Corporate Debtor rather placed order for more supply and in reply to e-mail,

Corporate Debtor claimed that quality of supply was inferior leading to problem of tip breaking. It is stated that in spite of e-mails and letters sent, confirmation of Accounts sought, the dues were not completely cleared and thus notice was sent on 01.02.2018 under Section 8 of Insolvency and Bankruptcy Code (in short **IBC**) [Page- 159] claiming debt due. The Respondent sent reply (page- 168) dated 12.02.2018 raising dispute regarding quality.

3. The Appellant had filed Application under Section 9 of IBC on 29.03.2018 before the Adjudicating Authority (National Company Law Tribunal, Kolkata Bench, Kolkata) and Respondent appeared before the Adjudicating Authority and contested the Application. The Adjudicating Authority considered the matter and taking note of the defence with regard to sending of e-mails, concluded that there was pre-existing dispute and rejected the Application. The Application was rejected also on the basis that the claim was time barred.

4. Learned Counsel for the Appellant is submitting that the Adjudicating Authority has not properly appreciated the e-mails exchanged. Reference is made to copy of e-mail (page- 190) where the Corporate Debtor on 08.10.2014 sent e-mail to the Operational Creditor seeking urgent supply of Electro Carbon Paste. Learned Counsel also referred to the e-mail sent on 09.10.2014 (page-190) by the Operational Creditor to the Corporate Debtor informing that if for any reason material supplied was not found to be Ok, then intimation should be given within 48 hours. Reference was also made to earlier frequent rejections by the Corporate Debtor. Learned Counsel also referred to e-mail of 13.10.2014 (page-194) sent by the Operational Creditor to the Corporate Debtor regarding dispute raised with regard to quality and the sending of chemist to test the supply but the

Corporate Debtor did not cooperate. The e-mail shows that by letter dated 10.10.2014, Corporate Debtor had made serious complaint of quality.

5. The Adjudicating Authority has referred to this e-mail as well as an e-mail dated 10.10.2014 (page 196) to hold that that there were disputes raised with regard to the quality to Corporate Debtor. The argument of the learned Counsel for the Appellant is that even though the Corporate Debtor was raising issue of quality, still it went on placing orders for urgent supplies. According to the learned Counsel, for such reason, the dispute raised should have been ignored.

6. We have gone through judgment of the Adjudicating Authority and considering the e-mails pointed out, it does appear that there were issues raised regarding quality but the Corporate Debtor appears to have been in urgency on 08.10.2014 as stock was running out and placed order for ECA Paste (page 190). That by itself does not mean that the dispute regarding quality was not there or it was given up which required the parties to settle the matter between them.

7. Apart from this, the learned Counsel referred to Invoices (pages 131 to 138) which are all of the year 2014. The Application under Section 9 was filed on 29.03.2018. In such case, it was clearly beyond the period of three years. The purported acknowledgement by letter dated 03.04.2015 (page-157), which is a Confirmation of Accounts, has not been accepted by the Adjudicating Authority as the original copy was not produced and the acknowledgment which was produced before the Adjudicating Authority was disputed and the seal and signature was found to be not certain.

8. We do not find that on such basis, the limitation could be extended. It is stated that in 2017, the Appellant had sent letter of Demand (page-152) dated 27.07.2017. It is stated that the letter was not replied. If the demand is made and it was not replied, it cannot be construed as an acknowledgement.

9. We do not find any substance in the Appeal. We find no reason to interfere with the Impugned Order of the Adjudicating Authority.

The Appeal is dismissed. No order as to cost.

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

[Justice Anant Bijay Singh]
Member (Judicial)

(Kanthi Narahari)
Member(Technical)

Akc/Md