

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
NEW DELHI

Company Appeal (AT) (Insolvency) No. 269 of 2017
**[arising out of Order dated 10th October, 2017 by NCLT, New Delhi Bench
in Case No. (IB)-370(ND)/2017]**

IN THE MATTER OF:

**Vimal Organics Limited,
G 349, Preet Vihar,
New Delhi – 110 092.**

...Appellant

Versus

**Anya Polytech & Fertilizers Pvt. Ltd.,
G-9, Magnum House – 1,
Karam Pura Commercial Complex,
Delhi – 110 015.**

...Respondent

Present:

For Appellant : **Mr. Nesar Ahmad, PCS
Shri Ahsan Ahmad, Shri Rohit Chaudhary and Shri
S. K. Aggarwal, Advocates**

For Respondent : **Shri Nagesh P. and Shri Om Prakash, Advocates**

J U D G M E N T

SUDHANSU JYOTI MUKHOPADHAYA, J.

The appellant –‘Vimal Organics Limited’ reached an agreement with respondent – ‘M/s. Anya Polytech and Fertilizers Pvt. Ltd.’ (Corporate Debtor) on 3rd May, 2014 for supply of Buyer Zinc Sulphate Manufacturing Plant (50MTPD) complete with machinery. It was alleged that the Corporate Debtor

did not pay any amount for the invoices raised by the Operational Creditor against the Corporate Debtor.

2. After demand notice issued under sub-section (1) of Section 8 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as the 'I&B Code'), the respondent having not paid the amount, the Operational Creditor preferred an application under Section 9 I & B Code, which has been rejected by the Adjudicating Authority (National Company Law Tribunal) New Delhi by the impugned order dated 10th October, 2017 in case No. (IB)-370(ND)/2017.

3. Learned counsel appearing on behalf of the appellant submitted that there is no dispute in existence on the date of filing of the application, whatever the dispute raised by the respondent relates to payment of tax which cannot be treated to be an 'existence of dispute' within the meaning of sub-section (6) of Section 5 read with Section 9 of the I & B Code.

4. Per contra, according to the learned counsel for the Corporate Debtor there is an 'existence of dispute'. Both the parties relied on the evidence on record in support of their claim.

5. On hearing the learned counsel for the parties and perusal of the record, the following facts emerges:

The agreement was reached between the 'Operational Creditor' and the 'Corporate Debtor' on 3rd May, 2014 wherein the 'Operational Creditor' undertook to supply the Corporate Debtor 'Zinc Sulphate Monohydrate' (50 MTPD). In terms of said agreement the 'Operational Creditor' after supply of goods was required to provide services to the Corporate Debtor in the matter of engineering, supervision and erection and commissioning the project. The

price for “supply of goods, and for supervision, erection and commissioning” have been mentioned at Article 3. The ‘terms and conditions of the payment’ for such supply and services has been mentioned at Article 4.1.

6. It is not in dispute that the appellant (Operational Creditor) supply i.e. ‘Zinc Sulphate Monohydrate’ (50 MTPD) to the Corporate Debtor but it appears that after supply of goods commissioning was not made properly which was detected during the trial run. By email dated 25th February, 2016, the respondent Corporate Debtor intimated the Operational Creditor that the Corporate Debtor need support and cooperation of the Operational Creditor and required to visit their site to start trial run of zinc plant. The Corporate Debtor also intimated that the Managing Director of the Corporate Debtor is anxious and impatient due to the non-starting of the trial run due to which production has been hampered. By a subsequent letter dated 31st May, 2016, the Corporate Debtor intimated the Operational Creditor that the efforts of team of engineers etc. could not achieve production of 40.0 MT/per day, due to design by the Operational Creditor. Every day there is a failure either in equipment tripping procedure or for any other reason. It was specifically mentioned that due to non-performance on the part of the ‘Operational Creditor’, the ‘Corporate Debtor’ were unable to supply the quantity of zinc. The ‘Operational Creditor’ was also informed that the ‘Corporate Debtor’ will work out on actual damage on this account of non-performance on the part of the Operational Creditor.

7. By subsequent letter dated 18th June, 2016, it was informed that the ‘Operational Creditor’ has not completed trial run of the plant successfully

and remained unsuccessful. Therein, it has also been mentioned that 15 items have also remained undelivered and details of which has been shown in the letter dated 18th June, 2016.

8. There is nothing on record to show that the defects were removed thereafter. For the said reason, in reply to the demand notice issued by Operational Creditor under sub-section (1) of Section 8 the Corporate Debtor by reply dated 20th July, 2017 brought the aforesaid facts to the notice of the Operational Creditor.

9. In the present case as we find that there is an 'existence of dispute', we hold that the Adjudicating Authority rightly dismissed the application preferred by the appellants under Section 9 of the I & B Code. In absence of any merit, the appeal is dismissed. No cost.

[Justice S.J. Mukhopadhaya]
Chairperson

[Justice Bansi Lal Bhat]
Member(Judicial)

New Delhi
22nd December, 2017

/ns/