

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
NEW DELHI

Company Appeal (AT) (Insolvency) No. 412 of 2019

IN THE MATTER OF:

Agarwal Coal Corporation Pvt. Ltd.

...Appellant

Versus

Sun Paper Mill Ltd. & Anr.

...Respondents

Present:

For Appellant :

**Mr. Rajiv Ranjan, Senior Advocate with
Ms. Varsha Banerjee, Mr. Milan Singh Negi, Mr.
Akshat Singh, Mr. Raza Abbay and Ms. Aliya
Durafshan, Advocates**

For 1st Respondent:

**Mr. Ramji Srinivasan, Senior Advocate with
Ms. Madhusmita Bora, Ms. Synola Mohapatra and
Mr. G. Ashoka Pathy, Advocates**

For 2nd Respondent :

**Mr. Krishnendu Datta and Mr. Vineet Ranjan,
Advocates**

ORDER

16.10.2019 The Appellant – ‘Agarwal Coal Corporation Private Limited’ (‘Operational Creditor’) filed a claim before the ‘Interim Resolution Professional’ / ‘Resolution Professional’. However, in the ‘resolution plan’ submitted by the ‘Corporate Debtor’, which is a ‘Micro, Small & Medium Enterprises’, allowed a sum of Rs. 2173 in favour of the Appellant. The said ‘resolution plan’ was filed on 16th October, 2018 and approved. This appeal

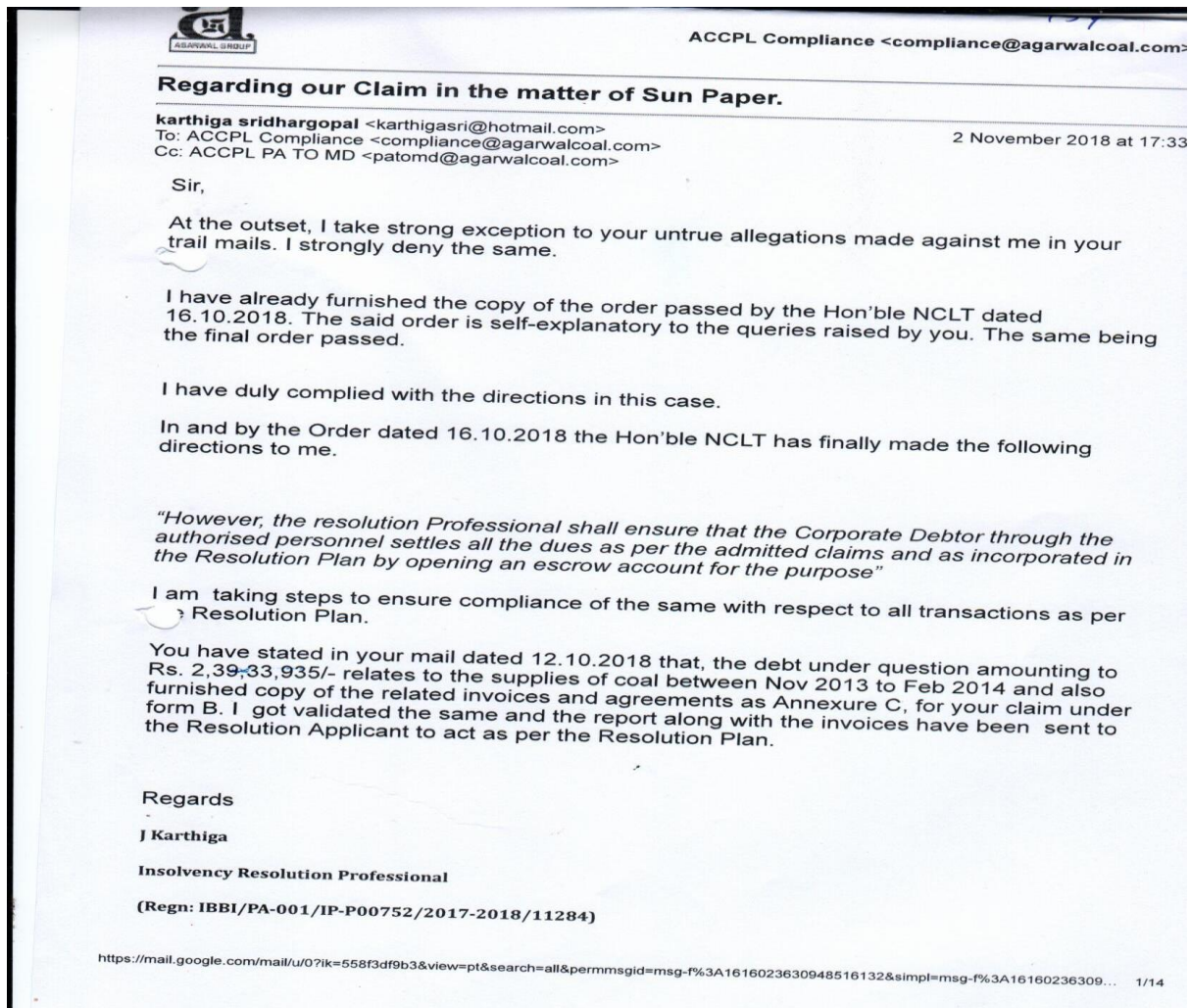
is in subsequent M.A. No. 677/2018 filed later and Interim Order dated 14th March, 2019 passed by the Adjudicating Authority (National Company Law Tribunal), Division Bench, Chennai, the Appellant ('Operational Creditor') has challenged the same.

2. According to the Appellant, the total claim amount as was Rs, 2,39,33,935 which was filed before the 'Resolution Professional' related to the supply of coal from November, 2013 to February, 2014. Learned counsel for the Appellant submitted that the related invoices and agreements were also enclosed along with the claim.

3. Further, according to the learned counsel for the Appellant, in view of the claim amount of Rs. 2,39,33,935 shown in the Form 5 (Application under Section 9), the 'Corporate Insolvency Resolution Process' was initiated against the 'Corporate Debtor' at the instance of the Appellant.

4. It is submitted that the claim amount being more than Rupees One Lakh, the Adjudicating Authority admitted the application under Section 9 and therefore, it is not open to the 'Resolution Professional' or the 'Corporate Debtor' to suggest that the amount is Rs. 2173.

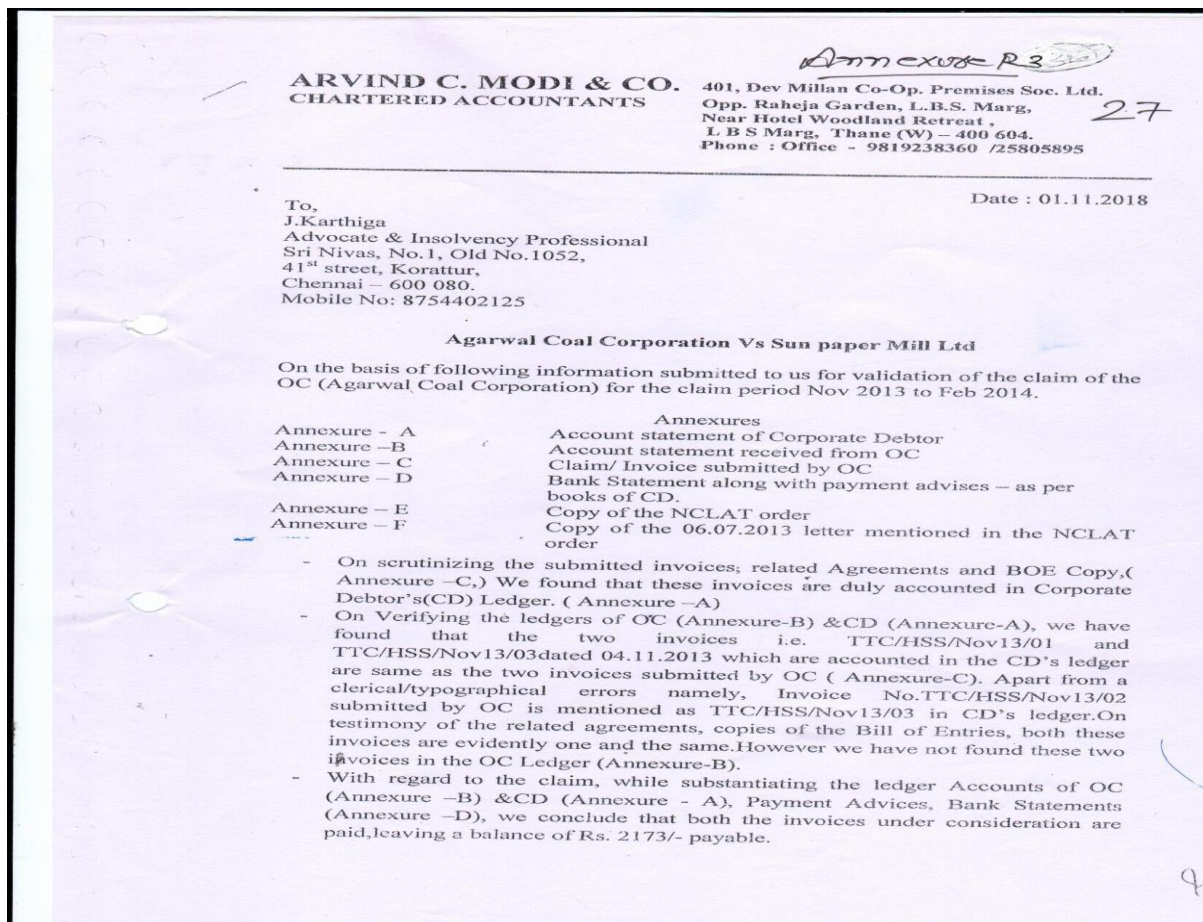
5. Reliance has been placed on the *e-mail* dated 2nd November, 2018 issued by the 'Resolution Professional' to the Appellant to suggest that the aforesaid claim amount was collated and validated by the 'Resolution Applicant', which reads as under:



6. Learned counsel appearing on behalf of the 'Resolution Professional' submitted that the claim amount collated was Rs 2173 as per report obtained from one independent 'Chartered Accountant', which was sent with the *E-mail* relied on by the Appellant. On validation of the same, the invoices were sent to the 'Corporate Debtor' / 'Resolution Applicant'. As per the said Report, the total amount as shown have been paid through RTGS or through other mode in the account of the 'Corporate Debtor' and only a sum of Rs. 2173 was found to be payable.

7. Same plea has been taken by the learned counsel for the 'Corporate Debtor' / 'Resolution Applicant'.

8. The Resolution Professional has brought on record a Report of independent Chartered Accountant dated 1st November, 2018, who on verification of the ledger of the 'Operational Creditor', invoices and the records of the 'Corporate Debtor' by letter dated 1st November, 2018 concluded that both the invoices under consideration are paid giving the balance of Rs. 2173 payable. The copy of the letter dated 1st November, 2018, which reads as follows:



- On verifying the NCLAT order (Annexure-E) which is based on the submission of the OC, it has been held that there are two periods under consideration.
 - a) Period No.I March 2012 to Feb 2013.(Disputed Period)
 - b) Period No.II Nov 2013 to Feb 2014.
- The claim period of the OC as mentioned in the Order passed by the Hon'ble NCLAT, comes within the Period No. 2, ie, Nov 2013 to Feb 2014.
- The relevant portion of the order passed by the Hon'ble NCLAT is summarised as follows:-
 - a) Learned Counsel appearing on behalf of the O.C submits that there is a dispute in existence related to the supply of the coal and it falls under the period 1, i. e, March 2012 to Feb 2013.(Disputed Period), in respect of which no claim has been filed by the OC
 - b) The Learned Counsel appearing on behalf of CD mentions a letter dt: 6th July 2013, by which the payment was withheld on intimation to the OC.

On verifying the copy of the letter along with Debit notes, we found that the Debit notes pertain to 3 invoices which come under Period I March 2012 to Feb 2013 (Disputed Period).

It has also been verified that the withheld payment vide Debit Notes No.126, 127 & 128 mentioned in the letter dt:06.07.2013(Annexure -F) are not adjusted against the payment towards the invoices dated 04.11.2013, under consideration. The payment for the two invoices dated 04.11.2013 under consideration is paid by the CD on verifying the details received from RP in Annexure 'D'.

Conclusion

On the basis of above submission the claim of the OC as per Annexure 'C' is being paid leaving an outstanding amount of Rs. 2173/- payable to OC.

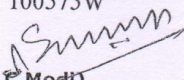
- However we would advise you to obtain certificates from Indian bank with regard to following payments for authenticity of the same.

Payment made from Indian bank, for the invoices under consideration.

Date	Payment	Indian bank Account No
23.12.2013	25,00,000.00	475652456
30.12.2013	15,00,000.00	475652456
06.01.2014	20,00,000.00	475652456
13.01.2014	20,00,000.00	475652456
21.01.2014	30,00,000.00	475652456
27.01.2014	30,00,000.00	475652456
03.02.2014	20,00,000.00	475652456
18.02.2014	40,00,000.00	440750291

08.03.2014	25,00,000.00	440750291
24.03.2014	20,00,000.00	440750291
13.08.2014	20,00,000.00	475652456

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For Arvind C Modi & Co.
Chartered Accountant
FR NO: 100575W

(Arvind C Modi)
M. NO. 33645

9. The Bank statement has also been enclosed with the reply-affidavit filed by the 'Resolution Professional' in support of the stand taken.

10. The only question arises for consideration is as to how Section 9 application was admitted if the amount is found to be Rs. 2173 which is much less than Rupees One Lakh.

11. In this regard we may only mention that at the stage of admission of application under Section 9, the Adjudicating Authority is required to notice whether the record is complete and there is a 'debt' and 'default' as per decision of the Hon'ble Supreme Court in '**Innoventive Industries Ltd. v. ICICI Bank**', (2018) 1 SCC 407]. Even if the claim amount is disputed and is more than Rupees One Lakh, it is to be admitted, the Adjudicating Authority is not required to go into the details of verification of the claim which is required to be made by the 'Resolution Professional' and, therefore, even if some record shows that claim amount is Rupees One Lakh, it is always open to the 'Resolution Professional' to collate the claim.

12. In view of the facts as narrated above, we are not inclined to interfere with the impugned order dated 14th March, 2019. The appeal is accordingly dismissed. No costs.

[Justice S.J. Mukhopadhaya]
Chairperson

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

[Kanthi Narahari]
Member (Technical)

/ns/gc