

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

**Company Appeal (AT) (Insolvency) No.739 of 2018**

**IN THE MATTER OF:**

**Kishore Shanker Signapurkar**

**...Appellant**

**Versus**

**Prime Soles and Anr.**

**...Respondents**

**Present:**

**For Appellant : Mr. Manu Yadav, Advocate**

**For Respondent 1 : Dr. Anurag Kumar Agarwal and Aman Bahl,  
Advocates.**

**ORDER**

**29.01.2019** This appeal has been preferred by Mr. Kishore Shanker Signapurkar, Shareholder of 'Signapurkar's Leather House Private Limited' - ('Corporate Debtor') challenging the order dated 01.08.2018 passed by the Adjudicating Authority (National Company Law Tribunal), Mumbai Bench, Mumbai, whereby and whereunder, the application under Section 9 of the Insolvency and Bankruptcy Code, 2016 ("I&B Code" for short) preferred by the Respondent 'Prime Soles'- ('Operational Creditor') has been admitted.

Contd/-.....

2. Learned Counsel appearing on behalf of the Appellant referring to the records submitted that there was pre-existing dispute and thereby the application u/s 9 was not maintainable.

3. Learned Counsel for the Respondent submitted that letter relied by learned Counsel for the Appellant do not relate to the invoice in question.

4. We have heard learned Counsel for the parties and perused the records.

5. Before the Adjudicating Authority, the Respondent ('Operational Creditor') pleaded that the 'Corporate Debtor' committed default in making payment of Rs. 75,54,595/- against supplies made between year 2012 and 5<sup>th</sup> August, 2017.

6. It is not in dispute that after 5<sup>th</sup> August, 2017 the Respondent ('Operational Creditor') had issued notice u/s 138 of Negotiable Instrument Act on 27.11.2008 with regard to bounce of cheque issued by the 'Corporate Debtor' towards the dues aforesaid.

7. The 'Corporate Debtor' in reply (through its Counsel) intimated the Respondent ('Operational Creditor') that the cheques were issued on the assurance of the 'Operational Creditor' for supply of goods. The 'Corporate Debtor' thereafter noticed that the quality of goods supplied were not upto mark and for the same reason the 'Corporate Debtor' asked not to release the payment.

8. From the aforesaid fact, it is evident that much prior to issuance of Demand Notice u/s 8(1), the 'Corporate Debtor' raised the question of standard of goods supplied by the 'Operational Creditor' upto 5<sup>th</sup> August, 2017. The Adjudicating Authority failed to notice the aforesaid pre-existing dispute and admitted the application u/s 9.

9. For the reason aforesaid, we set aside the impugned order dated 01.08.2018.

10. In effect, order (s) passed by Ld. Adjudicating Authority appointing 'Interim Resolution Professional', declaring moratorium, freezing of account and all other order (s) passed by Adjudicating Authority pursuant to impugned order and action taken by the 'Resolution Professional', including the advertisement published in the newspaper calling for applications all such orders and actions are declared illegal and are set aside. The application preferred by the Respondent- 'Prime Soles' under Section 9 of the "I&B Code" is dismissed. The Adjudicating Authority will now close the proceeding. The 'Corporate Debtor' is released from all the rigour of law and is allowed to function independently through its Board of Directors from immediate effect.

10. The Adjudicating Authority will fix the fee of 'Interim Resolution Professional' and the 'Corporate Debtor' will pay the fees for the period he has functioned. The appeal is allowed with aforesaid observations and directions.

However, in the facts and circumstances of the case, there shall be no order as to cost.

[Justice S.J. Mukhopadhaya]  
Chairperson

[ Justice Bansi Lal Bhat ]  
Member (Judicial)

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