

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
NEW DELHI

Company Appeal (AT) (Insolvency) No. 332 of 2018

IN THE MATTER OF:

Prowess International Pvt. Ltd. ...Appellant

Versus

M/s. Shyam Steel Industries Ltd. ...Respondent

Present:

**For Appellant : Mr. Akhilesh Kr. Shrivastava, Advocate and
Ms. Suhita Mukhopadhyay, PCS**

**For Respondent : Mr. Abhijeet Sinha, Mr. Shounak Mitra and Mr.
Zulfiqar Ali Alquaderi, Advocates**

O R D E R

06.07.2018 The appellant (Operational Creditor) preferred an application under Section 9 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as the 'I&B Code') for initiation of 'corporate insolvency resolution process' against the respondent – M/s. Shyam Steel Industries Limited (Corporate Debtor). The plea was taken that a sum of Rs. 44,73,178/- was due and payable by the 'Corporate Debtor' to the 'Operational Creditor', which defaulted in payment.

The Adjudicating Authority (National Company Law Tribunal), Kolkata Bench by the impugned order dated 11th May, 2018 rejected the claim on the ground that there is an 'existence of dispute' and no 'debt' is to be recovered, therefore, there is no 'default'.

We have heard the learned counsel appearing on behalf of the appellant and the learned counsel for the 'Corporate Debtor'.

From the record, we find that Company Petition was preferred by the appellant bearing C.P. No. 668 of 2016 before the High Court of Calcutta under Section 433(e) of the Companies Act, 1956 on the ground for non-payment of the aforesaid amount. However, the Hon'ble High Court dismissed the petition holding that *"if a triable issue is raised the company cannot be directed to be wound up. The company should have a fair chance to defend its claim. The petitioner has clearly stated in paragraph 10 of the petition that last payment was received on 11th May, 2012 and thereafter there was no acknowledgement of any liability. The remedy appears to be barred by limitation."*

The aforesaid decision of the Hon'ble High Court of Calcutta was challenged by the appellant before the Hon'ble Supreme Court in Special Leave Petition, which was also dismissed on 1st September, 2017. It is only thereafter the 'Operational Creditor' issued notice under Section 8(1) of the I&B Code and asked for initiation of the 'corporate insolvency resolution process'. However, in view of the finding of the Hon'ble High Court that the claim is barred by limitation, we hold that the Adjudicating Authority rightly hold that the debt claim is legally recoverable and therefore, there is no default. We find no ground to interfere with impugned order. It is accordingly dismissed. No cost.

[Justice S.J. Mukhopadhaya]
Chairperson

[Justice Bansi Lal Bhat]
Member (Judicial)

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