

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

**Company Appeal (AT) (Insolvency) No. 86 of 2019**

**IN THE MATTER OF:**

**Sumeet Kumar & Ors.**

**...Appellants**

**Versus**

**Jay Ace Technologies Ltd. & Ors.**

**...Respondents**

**Present:**

**For Appellants :**           **Mr. Sanjay Gupta and Ms. Mahima Singh, Advocates**

**For Respondents :**       **Mr. Karunesh Tandon and Mr. Chandra Shekhar  
Goswami, Advocates**

**Mr. Avnish Matta, IRP**

**O R D E R**

**07.05.2019**       The Respondent - 'Jay Ace Technologies Ltd.' (Operational Creditor) filed an application under Section 9 of the Insolvency and Bankruptcy Code, 2016 (for short, the '**I&B Code**') against 'M/s. Micromax Energy Ltd.' (Corporate Debtor) having admitted by the impugned order dated 17<sup>th</sup> December, 2018 by the Adjudicating Authority (National Company Law Tribunal), New Delhi Bench - III, the Appellants - Shareholders of the 'Corporate Debtor' have preferred this appeal.

2.     Learned counsel appearing on behalf of the Appellants submitted that there was a 'pre-existing dispute' about supply of goods (Batteries) supplied by the 'Operational Creditor'. Reliance has been placed on *e mail* dated 23<sup>rd</sup> November, 2017, which reads as follows :

“From: Krishan Bansal [mailto: [krishan.bansal@micromaxenergy.com](mailto:krishan.bansal@micromaxenergy.com)]

Sent: 23 November 2017 10:25

To: ‘Sudhir Goel’

Cc: ‘Mukesh’

Subject: RE: payment schedule

Dear Sudhirji

Ref our meeting of yesterday....

As stated in the meeting and also discussed subsequently with all concerned, this is to reiterate that we would be either retaining the warranty amount of Rs. 60 lakh or otherwise would be needing FD for the same. The warranty amount shall be released immediately on completion of warranty period.

Further as regard excise benefit, this is to state that necessary assistance/cooperation in this regard shall be duly extended by our group. As soon as you recover the amount from the Govt, the same may be adjusted against the amount of Rs. 30 lakh retained by us on this account. Further to state that any shortfall/excess will be made up by us on actual realisation of money.

You are requested to confirm the above so that the matter could be placed before our competent authority for further course of action.”

3. On hearing the parties and going through the record and also *e mail* dated 23<sup>rd</sup> November, 2017 we find that there is no dispute about the quality or short supply of the goods and the communication relates to the warranty to be given

by the respondent. The other *e mail* dated 1<sup>st</sup> March, 2018 are subsequent to the Demand Notice dated 4<sup>th</sup> January, 2018, we are not taking into consideration the communication between the parties.

4. At this stage, the learned counsel for the Appellants submits that the Appellants intend to settle the matter with the 'Operational Creditor'.

5. Mr. Avnish Matta, Interim Resolution Professional is present in person and submits that 9 claims have been received for Rupees Six Crores and Thirty Lakhs in all. The 'Committee of Creditors' have already been constituted.

6. In the facts and circumstances, while we are not inclined to interfere with the impugned order dated 17<sup>th</sup> December, 2018. However, this order will not come in the way of the Appellants to settle the matter with 'M/s. Jay Ace Technologies Ltd.' and other 'Financial Creditors and 'Operational Creditors' and thereafter move an application u/s 12A of the I&B Code before the 'Committee of Creditors.

7. The appeal stands disposed of with aforesaid observations. No cost.

[Justice S.J. Mukhopadhaya]  
Chairperson

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

/ns/gc