

**NATIONAL COMPANY LAW APPELLATE TRIBUNAL, NEW DELHI**  
**Company Appeal(AT) (Insolvency) No. 1435 of 2019**

**IN THE MATTER OF:**

**Sameer Gulati** **...Appellant**

**Vs**

**Salasar Techno Engineering Limited** **....Respondent**

**Present:**

**For Appellant:** **Mr. Ratan K. Singh, Mr. Rajeev Gurung, Mr. Fanish Kr. Rai, Mr. Manoj Jumar, Advocates and Mr. Sameer Gulati Appellant in person.**

**For Respondent:** **Mr. Ajay Garg, Ms. Akansha Meena, Advocates and Mr. Manish Agarwar, in person**

**Mr. Anuragh Bhatt and Mr. Lokesh Pathak,  
Advocates for RP.**

**ORDER**

**30.01.2020** Heard learned Counsel for the Appellant- Ex- Director of Corporate Debtor who has filed this Appeal against the impugned Order dated 03.12.2019 passed by Adjudicating Authority (National Company Law Tribunal, New Delhi, Bench-VI). The Application under Section 9 of Insolvency and Bankruptcy Code, 2016 (in short '**IBC**') was filed by the Respondent- Operational Creditor- Salasar Techno Engineering Limited against Netsoft Consulting Services Private Limited- Corporate Debtor. As the Application came to be admitted against the Corporate Debtor, this Appeal has been filed by the Ex-Director of the Corporate Debtor. We have heard Counsel for the parties.

2. The Application was filed by the Operational Creditor claiming that the Corporate Debtor had issued Purchase Order dated 12.06.2018 (page-63) in favour of the Operational Creditor to supply and install certain Telecom Towers of peculiar specifications. The order was for 28 Towers. The Purchase Order stipulated that the Corporate Debtor would make 15% payment in advance and

rest of the payment shall be released, after adjusting advance, as per work completion of all sites. It was claimed that Corporate Debtor never raised dispute regarding quality and quantity. The Operation Creditor could not install a Telecom Tower at a particular site as the work was stopped by the Corporate Debtor due to certain issues raised by the local residents and authorities of the area which was beyond the control of the Corporate Debtor. It is claimed that in spite of various requests and reminders, the Corporate Debtor did not pay the outstanding amount of Rs. 16,02,500/- and Notice under Section 8 of IBC was sent on 07.05.2019. Operational Creditor claimed in Application that in response to Notice, Corporate Debtor paid Rs. 7,37,500/- on 20.05.2019 and Rs. 1,27,500/- on 06.06.2019 and thus Application under Section 9 of IBC was required to be filed.

3. It is stated that the Corporate Debtor sent reply (Annexure-A7) on 20.05.2019 stating that the payment outstanding is of two Towers and they had made payment of one Tower via RTGS and the other Tower was not yet completed. Thus it was stated that 24<sup>th</sup> Tower was yet not complete.

4. The Adjudicating Authority heard both the parties and came to a conclusion that there was no pre-existing dispute and there was debt and default and thus admitted the Application under Section 9 of IBC.

5. Learned Counsel for the Appellant is submitting that although order was placed for 28 Towers and 15% interest was paid, later on requirement was reduced to 24 Towers and that 15% of the payment made was adjusted from the dues of 23 Towers. Learned Counsel stated that clearly 24<sup>th</sup> Tower was yet not constructed. There is no dispute that 23 Towers were constructed and one Tower

was put on hold due to issues raised by the local authorities. The argument for the learned Counsel for the Respondent- Operational Creditor is that in view of the Purchase Order, the Operational Creditor had invested money for erection of 28 Towers, which by e-mail was later on reduced to 24 Towers.

6. Learned Counsel for the Appellant stated that the Operational Creditor referred to his reply (Diary No. 17563) and Annexures-R2 & R3 were filed to show that the Corporate Debtor had confirmed the outstanding due on 31.12.2018 and that the Operational Creditor had to recover money which was confirmed by the Corporate Debtor.

7. Learned Counsel for the Appellant is relying on e-mail dated 26.04.2019 sent by the Corporate Debtor to the Operational Creditor. The same is part of different e-mails exchanged and the same is at Annexure-I/1 (Page-138). The e-mail reads as under:

...

*"From: Ajit Kumar [[Mailto:ajit.kumar@netsoftit.com](mailto:ajit.kumar@netsoftit.com)]*

*Sent: Friday, April 26, 2019 3:19 PM*

*To: 'Amit Rathore'*

*Cc: 'Manish Agarwal'; 'Yatish Agarwal'; 'rajesh verma';*

*'Sagar Parashar'; Sushil Grover*

*Subject: RE: Request for release of overdue payment of*

*Rs. 26,02,500/-*

*Dear Sir,*

*As per our accounts balance INR 8,65,000/- (23 towers)*

*24<sup>th</sup> which is on hold, so kindly acknowledge the same."*

...

8. This is the only document pointed out by the Corporate Debtor to say that there is pre-existing dispute. Going through the e-mail, which we have reproduced above, we do not find that it spells out anything about dispute as such required to be taken note under the provisions of IBC. 24<sup>th</sup> Tower was put on hold due to local problem is a fact between the parties. It was not dispute between them.

9. Learned Counsel for the Appellant states he is ready with the draft/cheque to pay the whole amount claimed under Section 9 of IBC without prejudice to the contentions raised by the Appellant.

10. Going through the e-mail pointed out to us and record as well as the Impugned Order, on merit, we do not find that we have any scope to interfere with the Impugned order by which Application under Section 9 had been admitted.

11. We take note of the amount involved and submission made by the learned Counsel for the Appellant that the Appellant is ready to pay the dues. The learned Counsel for Interim Resolution Professional (in short IRP) states that the IRP has received only one claim from the Financial Creditor-RBI Bank and the Bank has also told him that the Account of the Corporate Debtor is not an NPA and that the account is regular.

12. Learned Counsel for the IRP states that there are two claims of Operational Creditors and one of them is present Operational Creditor. As Committee of Creditors has already been constituted, our scope for interference gets limited

and we have to leave the parties to resort to Section 12A of IBC. We do hope that the parties will settle their dispute.

13. For the reasons recorded earlier, we dispose of the Appeal without interfering with the Impugned Order. The IRP may process the matter under Section 12-A of IBC, in case the Corporate Debtor moves as per Regulations in that regard.

Appeal is disposed of as above. No costs.

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

[Justice Anant Bijay Singh]  
Member (Judicial)

(Kanthi Narahari)  
Member(Technical)

*Akc/Md*