

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

**Company Appeal (AT) (Insolvency) No. 594 of 2018**

**IN THE MATTER OF:**

**Agarwal Coal Corporation Ltd.**

**...Appellant**

**Vs**

**Shriram Cement Ltd.**

**....Respondent**

**Present:**

**For Appellant: Mohd. Nazim Khan and Mr. Sanyam Goel, PCS  
with Mr. Mohtashim Kibriya, Advocate**

**For Respondent: None.**

**ORDER**

**03.01.2019:** The Appellant filed an application under Section 9 of Insolvency and Bankruptcy Code, 2016 (for short 'I&B Code') for initiation of Corporate Insolvency Resolution Process against 'Shriram Cement Ltd.' (Corporate Debtor). The Adjudicating Authority (National Company Law Tribunal), Ahmedabad Bench, Ahmedabad, dismissed the same on the ground of limitation.

2. Notice was issued on Respondent but the Corporate Debtor do not choose to appear. In the circumstances, we heard the case on merit and following observations were made on 11<sup>th</sup> December, 2018:-

**“ORDER**

**11.12.2018:** *Learned counsel for the Appellant submits that Adjudicating Authority wrongly rejected the application preferred by Appellant under section 9 on the ground that the claim is barred by limitations. He referred to the agreement reached between the parties on 01<sup>st</sup> March 2017 (page 46) , the winding up petition preferred by the Appellant before the*

*Hon'ble High Court of Gujarat, Ahmadabad in Company Petition No. 10 of 2015 with regard to same very claim and the Debt Settlement Agreement dated 01<sup>st</sup> March 2017 reached between the parties which was noticed by the Hon'ble High Court of Gujarat. We find that Debt Settlement Agreement is on Page 46 which shows terms of payment and Hon'ble High Court of Gujarat order dated 20<sup>th</sup> July 2017 is at Page 78 wherein the settlement has been noticed by the Hon'ble High Court. Thus, prima facie a case has been made out that the claim is not barred by limitation.*

*Inspite of service of notice a Respondent has not appeared. However, to give another opportunity we issue fresh notice on Respondent by email only. Dasti service is permitted. Appellant will also produce a copy of this order before the management of concerned officers of the Respondents. If Respondent so choose not to appear, we may pass order ex-parte on basis of records and observations made in the appeal.*

*Place the case 'for admission' on **03<sup>rd</sup> January 2019** within first two cases."*

3. Subsequently, notice through email was issued and served. The Appellant has also made dasti service on Mr. Ajay Kumar Bishnoi, Director; Mr. Alampallam Vedam Ramalingam, Director; Mr. Perintalmanna Venkatarama Krishana Kumar, Director and Mr. Arun Kumar Ganesan, Director i.e. all four Directors of the Corporate Debtor. Inspite of service of notice no appearance has been made nor any reply filed by the Corporate Debtor.

4. On 11<sup>th</sup> December, 2018, we have noticed the arguments and documents with reference of pages and we held that a prima facie case has been made out that the claim was not barred by limitation.

5. On hearing learned counsel for the Appellant and on perusal of the record, we hold that the claim of appellant is not barred by limitation, for the reasons already noticed on 11<sup>th</sup> December, 2018 and recorded above. The Adjudicating Authority failed to appreciate the relevant facts while passing the impugned order.

6. For the reasons aforesaid, we set aside the impugned order dated 17<sup>th</sup> August, 2018 and remit the matter to the Adjudicating Authority (National Company Law Tribunal), Ahmedabad Bench, Ahmedabad to admit the application under Section 9 in absence of any pre-existing dispute and paper being complete, after notice to the Respondent to enable the Respondent to settle the matter before admission of the application under Section 9 of I&B Code, if it so decides.

7. The appeal is allowed with aforesaid observations and directions. No costs.

[Justice S. J. Mukhopadhaya]  
Chairperson

[Justice Bansi Lal Bhat]  
Member (Judicial)

*am/gc*