

NATIONAL COMPANY LAW APPELLATE TRIBUNAL, NEW DELHI

Company Appeal (AT) (Insolvency) No. 803 of 2018

(Arising out of Order dated 14th December, 2018 passed by the Adjudicating Authority (National Company Law Tribunal), Mumbai Bench, Mumbai in CP 619/IBC/NCLT/MAH/2018)

IN THE MATTER OF:

Ankit Agrawal

...Appellant

Vs.

Nico Extrusions Ltd. & Anr.

...Respondents

Present: For Appellant: - Ms. Purti Marwah Gupta and Ms. Henna George, Advocates.

**For Respondents: - Mr. Rahul Totala, Advocate for R1.
Ms. Divya Swami, Advocate for IRP.
Mr. Devang P. Sampat, IRP.**

J U D G M E N T

SUDHANSU JYOTI MUKHOPADHAYA, J.

The Appellant, Shareholder of 'Nicomet Industries Limited' ('Corporate Debtor') has challenged the impugned order 14th December, 2018 passed by the Adjudicating Authority (National Company Law Tribunal), Mumbai Bench, Mumbai, admitting the application under Section 9 of the Insolvency and Bankruptcy Code, 2016 ('I&B Code' for short) filed by Respondent- 'Nico Extrusions Limited' ('Operational Creditor').

2. Learned counsel appearing on behalf of the Appellant submitted that the demand notice shown by the Respondent in Form-5 (application under Section 9) is different than the Demand Notice issued under Section 8(1) of the 'I&B Code'.

3. Further, according to counsel for the Appellant, there is pre-existence of dispute. Reliance has been placed on their pleading as was made before the Adjudicating Authority.

4. The case of the Appellant is that the 'Corporate Debtor' and the 'Operational Creditor' have had business relations over a long period of time. The 'Corporate Debtor' purchased certain materials from a group concern of the 'Operational Creditor' called 'Metec Asia Limited'. The goods were further supplied to one 'Jaico Enterprises LLP'. The quality of the goods being of poor standard, the said 'Jainco Enterprises LLP' raised objection in the 'debit note' for Rs.19,97,563/- (Rupees Nineteen Lakhs Ninety-Seven Thousand Five Hundred and Sixty-three Only). The 'Corporate Debtor' in turn telephonically informed the 'Operational Creditor' of the poor quality of the goods.

5. Though the aforesaid submission has been made but in support of such statement no document has been enclosed to suggest that the goods supplied by the Appellant were of poor quality or standard or that the 'Corporate Debtor' in turn telephonically had informed the 'Operational Creditor' of the poor quality of the goods.

6. Learned counsel for the Appellant relied on a 'debit note' dated 31st October, 2016 enclosed with the rejoinder affidavit. From the said 'debit note', it is clear that it was forward to one 'Metec Asia Limited' and not to the 'Operational Creditor' with regard to an Invoice dated 2nd May, 2015.

7. Learned counsel for the Respondents brought to our notice Form-5, the particulars of 'operational debt' and 'records of default' as has been enclosed wherein reference of the Invoice No. FPS/001/2015-16 dated 22nd April, 2015 has been made which is different from invoice dated 2nd May, 2015 relating to which letter dated 31st October, 2016 was issued to one 'Metec Asia Limited'. Thus, we find that there is no dispute raised by the 'Corporate Debtor' with regard to Invoice No. FPS/001/2015-16 dated 22nd April, 2015, relating to which claim amount of Rs.20,58,704.00/- was raised.

8. The Appellant has wrongly taken plea that there is difference between the amount as shown in the Demand Notice under Section 8(1) and the application under Section 9 (Form-5). From the Demand Notice, we find that unpaid amount has been shown as Rs.20,58,704.00/-. Part-IV of Form 5 also shows that same amount i.e. Rs.20,58,704.00/- as principal amount and Rs.11,11,700/- towards interest @ 18% per annum i.e. total Rs. 31,70,404/- (Rupees Thirty One Lakh Seventy Thousand Four Hundred and Four Only).

9. As we find that there was no existence of dispute and there being a debt and default, the Adjudicating Authority rightly admitted the application under Section 9 of the 'I&B Code'. We find no merit in this appeal. The appeal is accordingly dismissed. No costs.

(Justice S.J. Mukhopadhaya)
Chairperson

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

(Kanthi Narahari)
Member(Technical)

NEW DELHI
23rd April, 2019

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