

NATIONAL COMPANY LAW APPELLATE TRIBUNAL, NEW DELHI

Company Appeal (AT) (Insolvency) No. 820 of 2019

IN THE MATTER OF:

Sabarmati Gas Limited

...Appellant

Vs.

Shah Alloys Limited

...Respondent

Present: For Appellant: - Mr. Ramji Srinivasan, Senior Advocate with Mr. Yash Patel, Ms. Sumiti Vadera and Mr. Abhishek Prakash, Advocates.

For Respondent: - Mr. Ashwini Kumar, Senior Advocate with Ms. Gauri Rasgotra, Mr. Sumit Attri, Mr. Karan Khanna and Ms. Sanskriti Bhardwaj, Advocates.

J U D G M E N T

SUDHANSU JYOTI MUKHOPADHAYA, J.

The Appellant- 'Sabarmati Gas Limited'- ('Operational Creditor') filed application under Section 9 of the Insolvency and Bankruptcy Code, 2016 ("I&B Code" for short) for 'Corporate Insolvency Resolution Process' against 'Shah Alloys Limited'- ('Corporate Debtor'). The Adjudicating Authority (National Company Law Tribunal), Ahmedabad Bench, Ahmedabad rejected the application on following grounds:

- (i) all the invoices related to year 2012;
- (ii) the petition is not complete;
- (iii) for non-compliance of sub-section (3) of Section 9;
- (iv) in absence of any record of default;

(v) there is pre-existence of dispute

2. According to counsel for the Appellant, there are records of debt and default which are enclosed with Form-5 (application under Section 9). It has wrongly been alleged that the records were incomplete. In any case, if there is incomplete record then the time should have been allowed by the Adjudicating Authority instead of rejecting it.

3. Further, according to the Appellant, there is no pre-existence of dispute.

4. It was submitted that the Respondents admitted in letter dated 6th September, 2010 that it is facing 'financial difficulties' and requested the Appellant not to charge the extra amount. By letter dated 29th June, 2011, it also admitted the debt.

5. By means of other letter dated 24th January, 2012, the Respondents referred to higher quality of gas supplied for the last many years since 2008 and not any deficiency in quality of gas.

6. It was submitted that the 'Gas Sale Agreement' dated 30th May, 2008 executed between the parties only required Appellant to supply gas at 'minimum' NCV of 8350, meaning thereby that the agreement of the parties was that NCV of gas to be supplied will be higher than NCV of 8350. Thus, there actually seems no dispute regarding quality of gas supplied. The same letter dated 24th January, 2012 only sought

clarification as to how the charges for excess consumption are being calculated.

7. Refereeing to letter dated 24th January, 2012, it was submitted that the Respondent agreed to pay all bills and asked the Appellant to await the restructuring by BIFR. No dispute was raised. The Respondent never raised any formal dispute in this regard though a time of more than 7 years have passed from the date of its email dated 24th January, 2012.

8. From the stand taken by the Appellant, it is clear that the claim under Section 9 filed by the Appellant was prior to 2011-12. Thus, the claim is barred by limitation.

9. This apart, we find from the letter dated 4th January, 2013 that there was a pre-existence of dispute. By letter dated 4th January, 2013, 'M/s. Shah Alloys Limited' intimated the Director of 'Sabarmati Gas Limited'- ('Operational Creditor') that he is responsible for direct loss of production ranging from Rs.30-Rs.50 lakhs per day and also consequential losses that may be incurred by the 'Corporate Debtor' including penalties for non-compliance of contract for supplies for which the 'Operational Creditor' will solely be held responsible. For the said reason, the 'Corporate Debtor' has been registered with the 'Board for Industrial and Financial Reconstruction' vide Case No. 13 of 2010 and pursuant to Section 13(2) of the SICA, 1985, no recovery can be made. While raised such dispute, the 'Corporate Debtor' informed that it agreed

to pay all bills and requested the 'Operational Creditor' to wait for the payment of old bills till restructuring is agreed upon by the 'Board for Industrial and Financial Reconstruction'.

10. If letter dated 4th January, 2013 is also taken into consideration as acceptance of 'Corporate Debtor' to pay the amount, still application under Section 9 is barred by limitation as application was preferred on 20th August, 2018.

11. We have also noticed Part IV of Form-5. In Part IV, the Appellant has shown November, 2011 as the date from which the debt fell due.

12. As the application under Section 9 is barred by limitation and there is a pre-existence of dispute, we hold that application under Section 9 was rightly rejected by the Adjudicating Authority.

The appeal is dismissed with aforesaid observations. No costs.

(Justice S.J. Mukhopadhaya)
Chairperson

(Justice Bansi Lal Bhat)
Member(Judicial)

(Justice Venugopal M)
Member(Judicial)

NEW DELHI
19th December, 2019

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