

NATIONAL COMPANY LAW APPELLATE TRIBUNAL, NEW DELHI
Company Appeal (AT) (Insolvency) No. 199 of 2017

IN THE MATTER OF:

Siddharth Nahata **...Appellants**
Director/ Shareholder of Tryst Industries Private Limited
A-713, Sector-19
Noida-201301

Vs

Billets Elektro Werke Pvt. Ltd. **....Respondents**
42,1st Floor, Jagat Satguru Industrial Estate,
Off Aarey Road Goregaon East,
Mumbai-400063

Present:

For Appellants: **Mr. Anish Dayal, Mr. Jaideep Maheshwari, Ms. Rupam Sharma, Mr. Arjit Pratap Singh and Mr. S.K Singh, Advocates**

For Respondents: **Ms. Varsha Banerjee, Mr. Milan Singh Negi and Mr. Kunal Godhwani, Advocates**

ORDER

03.11.2017: Heard learned counsel for the appellant as well as the respondent.

The present appeal has been filed in view of the admission of Insolvency proceedings filed under Section 9 of the Insolvency & Bankruptcy Code, 2016 (Code-In brief) by the Adjudicating Authority- NCLT, New Delhi Bench in Insolvency Proceeding (IB-257(ND)/ 2017), vide orders dated 8th September, 2017. The respondent claimed to be an Operational Creditor & initiated the insolvency resolution process against the appellant (original respondent) Corporate Debtor on the grounds of default. The respondent claimed outstanding debt of Rs. 33.78 lakhs including of overdue interest.

The respondent had sent Section 8 notice dated 22nd May, 2017 (Annexure A-7) and the appellant replied raising dispute vide reply dated 7th June, 2017. Reference was made to earlier exchange of correspondence dated 20th July, 2016 and 3rd August, 2017 and criminal complaint filed by appellant to show that the amount was yet not due for reasons stated.

When the matter came up before the learned NCLT, parties for both sides were heard but the learned NCLT did not find the dispute raised by the appellant acceptable and was of the opinion that it was illusory and without legs to stand upon. For reasons recorded the learned NCLT admitted the Insolvency Resolution Process.

Now when this appeal has come up, learned counsel for the appellant as well as the respondent both submit that the matter has been compromised between the Operational Creditor and the Corporate Debtor and even the necessary payments have been made as well as care has been taken regarding the payments of the Insolvency Resolution Professional, who has been appointed. Counsel for Appellant stated that there are no other Creditors there.

A Compromise has taken place would not be material for the decision of this appeal, once the process has been set into motion. We have to consider this appeal on its own merits.

The learned counsel for the appellant refers to the letter dated 20th July, 2016 (Annexure-3) which was sent by the respondent claiming dues and the reply which was sent by appellant on 3rd August, 2016, copy of which has been filed. At that time itself the appellants had raised dispute that between the parties there was an understanding that the appellant would be dealing in the articles received from the respondent and when the purchase order is executed & payment is received Appellant will pay. Dispute was raised that in spite of such understanding the respondent had sold articles directly in the area of operation of the appellant and because of this the stock with Appellant could not be sold & adjustment was required to be made. It is stated that, appellant had claimed that there was violation of agreement, principles and ethics of business and violation of terms of dealership contract.

Similar dispute has been raised by the appellant in reply to the Section 8 notice. Learned counsel for the appellant is submitting that the understanding between parties about the business was violated and thus dispute had arisen. A prior existing dispute was there before Section 8 notice was sent and thus according to him the respondent could not have resorted Insolvency Proceeding.

The learned counsel for the respondent submits that there was no written document of dealership executed. At this stage learned counsel for the appellant points out Para 7(iv) from the counter filed by respondent where the

Respondent admitted contents of Para 7(iv) of the Appeal and clearly admitted that there was relationship between the appellant and the respondent of dealer and principal.

Looking to the record, we find substance in the arguments of learned counsel for Appellant that indeed there was a prior existing dispute and the application under Section 9 should not have been admitted.

In view of the above, the appeal is allowed. The impugned order admitting the Insolvency Resolution Process is quashed and set aside. The further proceedings in view of the impugned order are stopped. No orders as to costs.

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

(Balvinder Singh)
Member (Technical)

sh/nn