

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
NEW DELHI

Company Appeal (AT) (Insolvency) No. 765 of 2018

IN THE MATTER OF:

Narinder Kumar Garg

...Appellant

Versus

**Bhagwati Kripa Paper Mills Pvt.
Ltd. & Anr.**

...Respondents

Present:

For Appellant :

**Mr. Rakesh Kumar, Mr. Sahil Gupta and
Mr. Mastram Chachi, Advocates**

For Respondent:

Mr. Sahil Narang, Advocate
ORDER

09.01.2019 This appeal has been preferred by the appellant – shareholder of ‘A.P. Enterprises Private Limited’ (Corporate Debtor) against order dated 13th November, 2018 passed by the Adjudicating Authority (National Company Law Tribunal), Chandigarh Bench, Chandigarh whereby application under Section 9 of the Insolvency and Bankruptcy Code (for short, the ‘I&B Code’) by respondent ‘Bhagwati Kripa Paper Mills’ (Operational Creditor) has been admitted, order of moratorium has been passed and the ‘Resolution Professional’ has been appointed. The learned counsel appearing on behalf of the appellant submits that all the claim as made by the ‘Operational Creditor’ stands paid and there was no amount due and payable to the ‘Operational Creditor’. Therefore, according to him there is no ‘debt’ payable in fact and, therefore, the question of ‘default’ does not arise.

Mr. Sahil Narang, learned counsel appearing on behalf of the 'Operational Creditor' submits that there is 'pre-existence of dispute and in spite of reminders given by *e-mail* dated 27.02.2018 the amount due was not paid. In reply, learned counsel for the appellant relied on a 'comparison ledger account' prepared by the appellant to show that the total amount has been paid. However, learned counsel for the 'Operational Creditor' submits that the said 'comparison ledger account' has been prepared by the appellant and from record it shows that the 'corporate debtor' has not disputed the 'debt'.

Form 5, which is the application under Section 9 as filled up by the 'operational creditor' is on record. Part IV shows particulars of the 'operational debt' to the extent of Rs.4,4885,364/- outstanding on 23rd March, 2018. The details of transactions of account of which debt fell due and the dates from which such debt fell due has been enclosed. The last invoice receipt was raised on 8th November, 2017. In view of the mounting liability on 'A.P. Enterprises, (Corporate Debtor), Bhagwati Paper (Operational Creditor) regularly followed up with the 'Corporate Debtor' and by *e-mail* dated 1st January, 2018, the A.P. Enterprises (Corporate Debtor) was provided 'reconciled statement of accounts' to 'Bhagwati Paper. In response to the same vide *e-mail* dated 5th January, 2018 'Bhagwati Paper' provided its comments on the 'statement of accounts' as provided by 'A.P. Enterprises' but there is no dispute raised of outstanding dues. By *e-mail* dated 9th February, 2018 'Bhagwati paper' provided the 'reconciled outstanding amount payable by 'A.P. Enterprises' and it followed by reminders of *e-mails* made on 27th February and 28th February, 2018 etc. The A.P. Enterprises did not comply with the same. The outstanding dues is also evident from the detailed chart with the details of the cheques dishonoured by the A.P.

Enterprises as on 9th February, 2018, which was enclosed and marked as Annexure G to the Form 5. The cheque issued by the 'corporate debtor' on 9th February, 2018 shows that the 'comparison chart' by the appellant is merely an eyewash to mislead that there was no 'debt' payable. It is not clear as to why the 'corporate debtor' issued cheques if there was no 'debt'. The bank receipt of Rs. 8 Lakhs was shown on 9th February, 2018 and the bank receipt for Rs. Five Lakhs on 23rd February, 2018. The other cheques were dishonoured. In view of such facts, we do not accept the stand taken by the appellant-shareholder that there was no 'debt' due and payable. We accordingly dismiss the appeal. No cost.

[Justice S.J. Mukhopadhaya]
Chairperson

[Justice Bansi Lal Bhat]
Member (Judicial)

/ns/gc/