

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

**Company Appeal (AT) (Insolvency) No. 345 of 2018**

**IN THE MATTER OF:**

**Suprabha Protective Products Pvt. Ltd. ...Appellant**

**Vs.**

**Phoenix Trading & Consulting Pvt. Ltd. ...Respondent**

**Present: For Appellant: -Mr. K.Datta and Ms. Prachi Johri, Advocates**

**ORDER**

**09.07.2018—** The Appellant (Operational Creditors) filed an application under Section 9 of 'Insolvency and Bankruptcy Code, 2016' (hereinafter referred to as 'I & B Code, 2016') for initiation of Corporate Insolvency Resolution Process against the respondent 'Phoenix Trading and Consulting Pvt. Ltd.(Corporate Debtor). The Adjudicating Authority dismissed the application after hearing the parties by impugned order dated 24<sup>th</sup> April 2018 on the ground of existence of dispute.

The appeal has been filed after delay of 11 days and in view of the ground shown we condone the delay.

Learned Counsel appearing on behalf of the appellant submits that the respondent raised dispute in the year 2016 but subsequently, in the year 2017 agreed to pay the amount. Referring the one or other communications between the parties, it is submitted that respondent finally agreed to pay a sum of Rs. 6,25,489.10/- and thereby there was admitted debt and default.

From the record, we find that emails were exchanged between the parties. In between 1<sup>st</sup> October 2017 and 8<sup>th</sup> October 2017, by emails, while replying to the claim the Corporate Debtors raised the dispute regarding 'quality of goods' sent on 25<sup>th</sup> July 2016 and 26<sup>th</sup> September 2016 which were

returned from the overseas end-users with the Corporate Debtor. It was alleged that the quality and standard of the goods were not as per specifications agreed between the concerned parties.

Learned Counsel appearing on behalf of the appellant submits that these invoices have nothing to do with the admitted claim as is due. However, such segregation cannot be made on the basis of the record to find out the debt. There being an existence of dispute about quality of goods and as it is not possible for the Adjudicating Authority to vary such disputed claim while dealing an application under Section 9 and as there is dispute about quality of goods, we are not inclined to interfere with the impugned order dated 24<sup>th</sup> April 2018. The appeal is accordingly dismissed. No cost.

(Justice S.J. Mukhopadhaya)  
Chairperson

(Justice Bansi Lal Bhat)  
Member(Judicial)

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