

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
NEW DELHI

Company Appeal (AT) (Insolvency) No. 143 of 2019

IN THE MATTER OF:

M/s. Bhandari Hosiery Exports Ltd. & Ors.

...Appellants

Versus

M/s. In-Time Garments Pvt. Ltd. & Ors.

...Respondents

Present:

For Appellant : Mr. S.P. Sharma, Advocate

**For Respondent : Mr. Rakesh Kumar, Mr. Aashish Khattar and Mrs.
Chetna Bisht, Advocates**

ORDER

01.03.2019 This appeal has been preferred by M/s. Bhandari Hosiery Exports Limited & Ors. (Operational Creditors) against the order dated 4th December, 2018 passed by the Adjudicating Authority (National Company Law Tribunal), New Delhi (Court No. IV) rejecting the application filed under Section 9 of the Insolvency and Bankruptcy Code, 2016 (for short, 'the I&B Code'). The appeal has been preferred after delay of 12 days. However being satisfied with the grounds, the delay of 12 days in preferring the appeal is condoned.

2. From the record and the impugned order we find that the demand Notice under Section 8(1) was issued on 29th January, 2018 but much prior to the same by WhatsApp message dated 4th December, 2017, the respondent 'M/s. In-Time Garments Private Limited' (Corporate Debtor) intimated the appellants that the fabrics were defective and, therefore, they are not acceptable.

3. We find that there is a pre-existing dispute due to which the application under Section 9 of the I&B Code was not accepted.

4. Learned counsel appearing on behalf of the appellants submits that the respondent committed fraud which vitiates the impugned order dated 4th December, 2018. According to him, the respondent wrongly stated that the defective fabrics were returned by courier which is not the fact. However, such issue cannot be decided by the Adjudicating Authority as the question of return of fabrics is subsequent to that of the pre-existing dispute communicated by WhatsApp message on 4th November, 2017. Such being the position, the Adjudicating Authority having noticed the pre-existing dispute rightly rejected the application under Section 9 of the I&B Code. However, we make it clear that the Adjudicating Authority has not decided nor we have gone into the question whether while returning the fabric fraud is committed or not, which will be decided by the Court of competent jurisdiction.

The appeal is dismissed. No cost.

[Justice S.J. Mukhopadhaya]
Chairperson

[Justice Bansilal Bhat]
Member (Judicial)

/ns/gc/