

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
NEW DELHI

Company Appeal (AT) (Ins) No.433 of 2019

[Arising out of Order dated 06.03.2019 passed by National Company Law Tribunal, Mumbai Bench in CP (IB) – 531/I&BP/MB/2018]

IN THE MATTER OF:

Before NCLT

Before NCLAT

M/s. Valmont Structures
Private Limited
2nd Floor – Pentagon 4,
Magarpatta City
Hadaspar – Pune
Maharashtra – 411013

Operational Creditor

Appellant

Versus

M/s. Thakkarsons Roll
Forming Private Limited
507, Windfall,
Sahar Plaza, JB Nagar,
Andheri-East
Mumbai – 400059
Maharashtra

Corporate Debtor

Respondent

For Appellant:

**Ms. Sumesh Dhawan and Ms. Vatsala Kak,
Advocates**

For Respondent:

**Shri Rajdeep Lahiri and Ms. Krishna Purohit,
Advocates**

J U D G E M E N T

A.I.S. Cheema, J. :

1. The Appellant – Operational Creditor filed CP (IB) – 531/I&BP/MB/2018 before Adjudicating Authority (National Company Law Tribunal, Mumbai Bench) against the Respondent – Corporate Debtor

claiming that the Appellant was engaged in business of providing galvanization services to the Respondent – Corporate Debtor and from time to time raised invoices. The Appellant claimed that Rs.1,94,58,366/- including interest @ 24% per annum was due and in default. Notice (Page – 297) was issued on 26th February, 2018 under Section 8 of Insolvency and Bankruptcy Code, 2016 (I&B Code - in short). The Respondent – Corporate Debtor by Reply dated 6th March, 2018 (Page - 303) denied liability and claimed that it had already filed Civil Suit for damages of Rs.1,25,00,000/- against the Appellant before Civil Judge, Senior Division at Palghar in Special Civil Appeal 15/2018 on 5th February, 2018. Considering the defence of the Respondent, the Adjudicating Authority held that there was pre-existing dispute and rejected the Section 9 Application of the Appellant and thus, the Appeal.

2. The Appellant claims that the Appellant had in an e-mail dated 5th December, 2017 threatened Respondent that it would initiate legal action. The Respondent by way of counterblast filed a Civil Suit only to create a dispute/defence. It is also claimed that the Suit did not relate to invoices which were subject matter of the Application under Section 9 and thus, the Impugned Order deserved to be set aside and the Application under Section 9 should have been admitted.

3. Against this, The Respondent is claiming that the Respondent filed the Civil Suit on 5th February, 2018, which was before the date of sending

of Section 8 Notice and the Suit was filed for a decree of Rs.1,25,00,000/- against the Appellant – Operational Creditor and it is bona fide dispute. According to the Respondent, it had earlier also issued Notice to the Appellant on 27th November, 2017 and 15th December, 2017 and had claimed that on account of providing sub-standard and low quality products and delay in delivery, the Respondent had suffered a liquidated loss of Rs.1,25,00,000/-. The Counsel for Respondent referred to Reply (Annexure A-10 – Page 303) dated 06.03.2018 and relied on the copy of the Suit (Annexure - A7 – Page 110) which has reference inter alia to copy of legal Notice dated 15th December, 2017.

4. Admittedly, the Suit was filed on 3rd/5th February, 2018 which is before the Section 8 Notice dated 26th February, 2018. Although the Appellant claims that the dispute raised in the Suit did not relate to the invoices relied on by the Appellant – Operational Creditor, no such distinction has been drawn before us and if the plaint is perused, it referred to the business relations between the parties and referred to various purchase Orders and claims that the Appellant – Operational Creditor was unable to maintain delivery schedule and quality of product and that the Corporate Debtor has suffered loss on account of Operational Creditor.

5. We find that the Adjudicating Authority rightly held that there was a pre-existing dispute between the parties and thus, rightly declined to

admit the Section 9 Application. There is no substance in this Appeal.

The Appeal is dismissed. No Orders as to costs.

[Justice S.J. Mukhopadhaya]
Chairperson

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

[Kanthi Narahari]
Member (Technical)

29th August, 2019

/rs/sk