

NATIONAL COMPANY LAW APPELLATE TRIBUNAL, NEW DELHI

Company Appeal (AT) (Insolvency) No. 1227 of 2019

IN THE MATTER OF:

S.S. Polymers

.... Appellant

Vs

Kanodia Technoplast Limited

.... Respondent

Present:

**For Appellant: Mr. Ankit Singal and Mr. A. Gupta,
Advocates.**

ORDER

13.11.2019 The Appellant – S.S. Polymers filed application under Section 9 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as the ‘**I&B Code**’) for initiation of ‘Corporate Insolvency Resolution Process’ against M/s Kanodia Technoplast Limited (‘Corporate Debtor’). The Adjudicating Authority (National Company Law Tribunal), Court No.IV, New Delhi, rejected the application on the ground that there is no debt payable and there is no default.

2. The Learned Counsel appearing on behalf of the Appellant submits that the Adjudicating Authority rejected the application on wrong presumption that there is no Agreement between the parties. It is submitted that for the purpose of application under Section 9 of the I&B Code, it is not necessary to rely on any Agreement, if there is debt payable and default, and any record can be relied upon in terms of Part-IV of Form 5, i.e., the application under Section 9 as prescribed by The Insolvency and Bankruptcy Board of India.

3. The Adjudicating Authority has noticed that a sum of Rs.25,00,000/- out of Rs.32,71,800/- was paid to the Appellant by 31st December, 2018 through RTGS(s). The remaining amount of Rs.7,71,800/- was also paid by ‘Corporate Debtor’ to the Applicant by 17th January, 2019 through NEFT(s). The said amounts were paid before the admission of the application under

Section 9 of the I&B Code. Even after receiving the total amount due, the Appellant pursued the application under Section 9 of the I&B Code for a sum of Rs.2,16,155/- towards interest. In these background, the Adjudicating Authority observed that in the absence of any Agreement, no such amount can be claimed.

4. The Learned Counsel for the Appellant relied on 'Invoices' to suggest that in the 'Invoices', the claim was raised for payment of interest. However, we are not inclined to accept such submission as they were one side Invoices raised without any consent of the 'Corporate Debtor'.

5. Admittedly, before the admission of an application under Section 9 of the I&B Code, the 'Corporate Debtor' paid the total debt. The application was pursued for realisation of the interest amount, which, according to us is against the principle of the I&B Code, as it should be treated to be an application pursued by the Applicant with malicious intent (to realise only Interest) for any purpose other than for the Resolution of Insolvency, or Liquidation of the 'Corporate Debtor' and which is barred in view of Section 65 of the I&B Code.

6. We find no merit in this Appeal and it is accordingly dismissed.

[Justice S. J. Mukhopadhaya]
Chairperson

[Justice Venugopal M.]
Member (Judicial)

Ash/SK