

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
NEW DELHI

Company Appeal (AT) (Ins) No.950 of 2019

[Arising out of Order dated 06.08.2019 passed by National Company Law Tribunal, Principal Bench, New Delhi in Company Petition No.(IB)-87 (PB)/2019]

IN THE MATTER OF:

Before NCLT

Before NCLAT

Duke Sponge and Iron
Pvt. Ltd.
Ground Floor,
Plot No.-1,
MPL No.-487/1-C-A-1,
Khasra No.-415/267,
Village – Jhilmil,
Tahirpur,
G.T. Road,
Dilshad Garden,
Shahdara,
Delhi – 110 095

Applicant/
Operational
Creditor

Appellant

Versus

1. Laxmi Foils Private
Limited
8638, East Park Road,
Karol Bagh,
New Delhi – 110055

Respondent/
Corporate Debtor

Respondent No.1

Also At:
4646-C, Ajmeri Gate,
Opposite Gali No.1,
Delhi – 110 002

Also At:
Khasra No. 159,
Raipur Bagwanpur
Industrial Area,
Roorkee,
Uttarakhand – 247667

2. Mr. Rajesh Jain
 Director
 M/s Laxmi Foils
 Private Limited
 8638, East Park Road,
 Karol Bagh,
 New Delhi – 110055

Respondent No.2

Also At:-
 H-30, Ashok Vihar,
 Phase-I,
 New Delhi – 110088

3. Mr. Vijay Jain
 Director
 M/s Laxmi Foils
 Private Limited
 8638, East Park Road,
 Karol Bagh,
 New Delhi – 110055

Respondent No.3

Also At:-
 H-30, Ashok Vihar,
 Phase-I,
 New Delhi – 110088

4. Mr. Ram Niwas Jain
 Director
 M/s Laxmi Foils
 Private Limited
 8638, East Park Road,
 Karol Bagh,
 New Delhi – 110055

Respondent No.4

Also At:-
 H-30, Ashok Vihar,
 Phase-I,
 New Delhi – 110088

For Appellant: **Shri Vinay Navare, Sr. Advocate with Shri A.K.Vali, Shri Rajat Jain and Shri Bhaskar Vali, Advocates**

For Respondent: **Shri Ashish Verma and Shri Rahul Gupta, Advocates**

J U D G E M E N T**(4th February, 2020)****A.I.S. Cheema, J. :**

1. The Appellant is Operational Creditor who filed Application under Section 9 of the Insolvency and Bankruptcy Code, 2016 (IBC - in short) before Adjudicating Authority (National Company Law Tribunal, Principal Bench, New Delhi) in Company Petition No.(IB)-87 (PB)/2019 against the Respondent – Corporate Debtor. The Application came to be rejected and hence, the present Appeal.

2. In the Appeal, the Appellant has arrayed the Directors of the Corporate Debtor as Respondents 2 to 4.

3. According to the Appellant, the Corporate Debtor had been purchasing goods from the Appellant – Operational Creditor since 2012 and Corporate Debtor (hereafter referred as Respondent) had a running account with the Appellant. The Appellant used to supply the goods and was raising invoices. Respondent used to make lump sum payments for the goods supplied with the understanding that payments would be adjusted against the first outstanding invoices.

4. The Appellant claims that it has supplied goods vide Invoice Nos.0243 and 0244 which were dated 10th January, 2015 and further goods were supplied vide invoices numbered 0337 and 0338, both dated 30th March, 2015. Thereafter, Respondent did not place any orders with the Appellant. Final payment amounting to Rs.1,14,882/- was received on

2nd January, 2016 and unpaid balance in Financial Year – 2015 - 2016 was Rs.84,85,505/-. Additionally, the Respondent had failed to supply 'C' Forms for supplies made in 2014 – 2015 which were of the value of Rs.7,59,72,649/-. The same were provided only on 14th January, 2019 after filing of the Section 9 Petition. The Appeal claims that the Respondent before the Adjudicating Authority raised false defence relying on two forged and fabricated debit notes dated 31st March, 2015 and 15th April, 2016. The debit note dated 31st March, 2015 was admittedly ante-dated. The stamp used on the debit notes was never used by the Appellant and the signatures on the debit note purporting to be on behalf of the Appellant were scribbles which could not be deciphered. According to the Appellant, the Adjudicating Authority wrongly relied on said debit notes and other e-mails to record that there was pre-existing dispute. According to the Appellant, the Application was wrongly rejected by the Adjudicating Authority and the Adjudicating Authority wrongly ignored the documents relied on by the Appellant.

5. The Respondent – Corporate Debtor claims that the Appellant and its sister concerns have lodged various litigations against the Respondent Company. The Reply makes reference to the same. Respondent is disputing the claim that there are dues recoverable. According to the Respondent, entire amount on account of 4 invoices referred was discharged by way of debit note bearing date 31st March, 2015 for an amount aggregating to Rs.24,54,000/- on account of a rate difference and debit note dated 15th

April, 2016 for an amount aggregating to Rs.60,00,000/- on account of short supply. The Respondent has annexed the copy of debit notes as Annexure A and B to its Reply (Diary No.15744). According to the Respondent, the Appellant claims that it received these debit notes only when the Respondent sent Reply dated 28.12.2018 (Page – 94 of the Appeal) in response to the Section 8 Notice dated 12th December, 2018 (Page – 84). According to the Respondent, this case of the Appellant is false. Respondent claims that the debit notes bear signature and stamp of the Appellant which clearly shows that the Appellant had received the debit notes from the Respondent. Thus, the claim of the Appellant that the debit notes were received only with the Reply Notice sent on 29.12.2018, is false. According to the Respondent, the debit notes are duly stamped and signed by the Appellant and they constitute dispute. In 2015, Appellant never issued any communication to the Respondent seeking payments of amounts. Had the amounts been outstanding, the Appellant would have made claim. It is unlikely that for so long period, the Appellant did not make any claim. On 3rd September, 2015, Director of the Appellant had sent Statement of Accounts. In response, the Respondent had on same date, replied requesting for accounts of other companies with which Respondent was doing business, which would include the accounts for the transactions between the Appellant and Respondent. The Appellant, however, never sent the accounts on the pretext that they were under income tax assessment. The concerned e-mails have been attached by the Respondent at Annexure 'C' (Reply Diary No.15744). On 28th December,

2015, Appellant had sent an e-mail requesting for 'C' Form. In this e-mail, Appellant made no whisper regarding outstanding liabilities. Respondent claims that even this shows that there were no dues and only 'C' Forms were sought. The Respondent has filed copy of the e-mail at Annexure – D. Respondent claims that in spite of exchange of e-mails, amounts were never claimed till Section 8 Notice was sent in December, 2018.

6. We have heard Counsel for both sides on above lines. They have also filed written submissions. Parties are making various averments against each other on the basis of the correspondence available on record. We have gone through the record and perused the Impugned Order also. On one side, the Operational Creditor is claiming to have supplied aluminium foils and referring to the 4 invoices is claiming that there were dues outstanding and that as 'C' Forms had not been supplied, further dues were liable to be paid by the Respondent. Respondent appears to have claimed before the Adjudicating Authority that it had also sent 'C' Forms which were not accepted and which were lying with it and in the Reply Notice, offer was made to still receive the 'C' Forms. It is now not in dispute that the Appellant received the 'C' Forms during pendency of the Application before the Adjudicating Authority.

7. Against the claim of the Appellant, Respondent claimed that there were no dues claimed because the Respondent had raised debit notes and the Appellant had accepted the debit notes and stamped and signed the debit notes, which are Annexure – A and B of the Reply. Respondent claims

that the debit notes cover the claim made by the Appellant and that the claims stood extinguished so far as in 2016. It would be appropriate to reproduce para – 30 to 34 from the Impugned Order which shows as to how the Adjudicating Authority has appreciated the debit notes:-

- “30. Respondent has claimed that debit notes bearing dated 31.03.2015 and dated 15.04.2016 have been duly received and acknowledged by the petitioner by affixing the stamp of the petitioner company.
31. The main contention of the respondent is that these unpaid debit notes combined covers the alleged operational debt, and therefore the present claim stands extinguished long before in the year 2016.
32. In response petitioner has claimed that the debit notes are forged and fabricated and was received for the first time with the reply dated 28.12.2018.
33. Ordinarily acknowledgements bearing signature and seal of a company are sufficient evidence of receipt. On one hand respondent has not placed any proof of dispatch/delivery of debit notes to the petitioner and on the other hand the petitioner could not confirm whether any FIR was filed or any action was initiated when the alleged unauthorized and illegal use of the seal of the company came to their knowledge. No FIR in this respect has been placed on record.
34. These are matters of trial and enquiry. Tribunal in the present proceeding cannot go into roving enquiry into the disputed claims made by the parties. This is not the forum to examine and adjudicate as to which portion of the claims or counter claims are admissible. At this stage it is immaterial to consider who will succeed. Tribunal will not examine the merits of the

dispute other than to see if there is in fact exists a real dispute having some substance.”

Adjudicating Authority further observed in para – 36 and 37 as follows:-

- “36. In the factual background it is seen that there is pre-existing dispute and there is also a confusion on the actual amount of default. Though the invoices pertain to the year 2015, there was no effective pursuance for a long period from 2015 till end of 2018. The various correspondences placed on record show that dispute was raised for the first time to evade liability but certainly pre-existed much prior to the issuance of notice under Section 8 of the Code. The email dated 03.09.2015 reveals that the respondent requested for the accounts of the petitioner to confirm the balance which was never issued. There are allegations of non-conciliation of accounts despite request.
- 37. There are dealings between the parties long since the year 2012 and the claims and allegations of both sides’ *prima facie* suggest the need for elaborate enquiry. Once there is material to believe that dispute exists, it is right to have the matter tried out before the axe, in the form of corporate insolvency resolution process falls.”

8. For such reasons, the Adjudicating Authority concluded that in the factual document, there was existence of real dispute which could not be overruled and was of the view that there was substance and plausible contention in pleadings of both sides which require investigation. The Impugned Order shows that with the limited jurisdiction to examine the claim and defence, the Adjudicating Authority concluded that there was dispute as defined in Section 5(6) of the Code and rejected the Application.

9. We have also gone through the claims being made by the Appellant and claims being made by the Respondents and it appears to us also that the averments and counter averments required trial which is not possible in the jurisdiction of Section 9 of IBC. Whether or not similar stamp of the Company was being used by the Appellant, which is seen in the debit notes, would be matter of evidence. There has to be prima facie material to doubt a document as forged or fabricated if the same is to be ignored. It is stated that after the Impugned Order was passed, with observations as seen above in para – 33 of the Impugned Order, subsequently, the Appellant has filed FIR. It would naturally take its own course. We do not interfere in Impugned Order.

10. Considering the limited sphere in which Adjudicating Authority and this Tribunal operate, when we sit down to consider the admitting or otherwise of an Application under Section 7, 9 or 10 of IBC, if we admit or reject the Application on the basis of a document put on record by the opposite side, the aggrieved party has option to move appropriate civil and/or criminal forums and in case it is established in any appropriate proceeding that the document was falsified, forged or fabricated, it will be, inter alia, open for the aggrieved party to move for action under Part II Chapter VII of IBC which deals with Offences and Penalties. The Adjudicating Authority has already recorded in Para – 43 of the Impugned Order that the observations made shall not be construed as an expression of opinion on merit of the controversy and the right of the Applicant before any other forum shall not be prejudiced on account of the dismissal of the

Application. We also observe accordingly. The Respondent would be at liberty to pursue appropriate remedies in appropriate forums which would be uninfluenced by the observations made by us in this Judgement. If at any point of time it is held that the debit notes relied on by the Respondent are false and forged, the Appellant would be at liberty to pursue further appropriate remedies available under the law.

The Appeal is disposed accordingly. No Orders as to costs.

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

[Kanthi Narahari]
Member (Technical)

[V.P. Singh]
Member (Technical)

/rs/md