

NATIONAL COMPANY LAW APPELLATE TRIBUNAL, NEW DELHI
Company Appeal (AT) (Insolvency) No. 441 of 2018

IN THE MATTER OF:

Premium Mouldings and Pressing Pvt. Ltd.

...Appellant

Vs

Yusen Logistic (India) Pvt. Ltd. & Anr.

....Respondents

Present:

**For Appellants: Mr. Rakesh Kumar, Ms. Chetna Bisht and
Ms. Preeti Kashyap, Advocates.**

**For Respondents: Mr. Manish Paliwal, Mr. Vikas Kumar and
Mr. Ashutosh Sharma, Advocates.**

O R D E R

09.08.2018: This appeal has been preferred by the Appellant against the order dated 24th July, 2018 passed by the Adjudicating Authority (National Company Law Tribunal), New Delhi Bench in C.P. No. IB-591(ND)/2018, whereby application under Section 9 of the Insolvency and Bankruptcy Code, 2016 (for short 'I&B Code') filed by the Respondent – 'Yusen Logistic (India) Pvt. Ltd.' has been admitted, order of moratorium has been passed and Interim Resolution Professional has been appointed.

2. Learned counsel appearing on behalf of the Appellant submits that there is an existence of dispute. The Respondents agreed that only after receipt of payment they will release Export Promotion Capital Goods Scheme related documents and only thereafter next payment is to be made. It is submitted that as the Respondents have not released the Export Promotion Capital Goods Scheme related documents, the amount were not released. Thus there being an existence of dispute, the application under Section 9 was not maintainable.

3. Learned counsel appearing on behalf of the Appellant further submits that in fact the Appellant – Director of the Company had negotiated with the Respondents and already settled the dispute. A sum of Rs.50 Lakhs (Rupees Fifty Lakhs Only) towards final outstanding dues has been paid by handing over Cheque no.086603 dated 4th August, 2018 of HDFC Bank, Okhla Industrial Area, New Delhi in favour of 'Yusen Logistics India Private Limited'

4. Mr. Manish Paliwal, learned counsel appearing on behalf of the Respondents while accepted that the amount has been received by the Operational Creditor, has not disputed the fact that the Export Promotion Capital Goods Scheme related documents were not handed over to the Appellant, which caused the confusion.

5. As we find that there was existence of dispute and the claim has been settled between the parties, we set aside the impugned order dated 24th July, 2018 passed by the Adjudicating Authority (National Company Law Tribunal), New Delhi Bench in C.P. No. IB-591(ND)/2018. No cost.

6. In effect, order(s) passed by the Adjudicating Authority appointing 'Resolution Professional', declaring moratorium, freezing of account, and all other order(s) passed by Adjudicating Authority pursuant to impugned order and action taken by the 'Resolution Professional', including the advertisement published in the newspaper calling for applications all such orders and actions are declared illegal and are set aside. The application preferred by Respondent under Section 9 of the I&B Code, 2016 is dismissed as withdrawn. The 'Corporate Debtor' is released from all the rigour of law and is allowed to function independently through its Board of Directors from immediate effect.

7. The Adjudicating Authority will fix the fee of the 'Resolution Professional', and the 'Corporate Debtor' will pay the fees, and other cost incurred by him.

[Justice S. J. Mukhopadhaya]
Chairperson

[Justice Bansi Lal Bhat]
Member (Judicial)

am/sk