

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
NEW DELHI

Company Appeal (AT) (Ins) No.246 of 2019

[Arising out of Order dated 25.01.2019 passed by National Company Law Tribunal, Jaipur Bench, Jaipur in IB No.710(ND)/2018 TA No.06/2018]

IN THE MATTER OF:

Before NCLT

Before NCLAT

Mr. Alok Jain
S/o Lt. Sh. J.P. Jain
R/o SE – 138,
Shastri Nagar,
Ghaziabad, UP – 201002

Operational Creditor

Appellant

Versus

Tijaria Polypipes Ltd.
A-130(E), Road No.9D
Vishwakarma Industrial
Area,
Jaipur – 302013
Rajasthan
Through its Authorized
Representative

Corporate Debtor

Respondent

For Appellant:

Ms. Prachi Johri, Advocate

For Respondent:

Shri Avneesh Garg, Advocate

J U D G E M E N T

(30th April, 2019)

A.I.S. Cheema, J. :

1. The Appellant claiming himself to be Operational Creditor filed Petition - IB No.710(ND)/2018 TA No.06/2018 under Section 9 of the Insolvency and Bankruptcy Code, 2016 (IBC – in short) before the Adjudicating Authority (NCLT), Jaipur Bench, Jaipur. He claimed that

there was an operational debt of Rs.19,98,700/- outstanding against the Respondent – Corporate Debtor which debt was in default. The Appellant claimed that the Corporate Debtor manufactures Polypipes and he had entered into the Agreement dated 26.12.2017 to provide services as sales representative of the Corporate Debtor for sale of PLP Duct Pipe of 40mm x 33mm in the State of Telangana. According to the Appellant, the Respondent entered into Rate Contract Agreements with the Government of Telangana and the value of Contract of order procured was Rs.1,57,87,000/-. He also learned about another order worth Rs.1,20,00,000/-. The Appellant claimed that in spite of such orders and the Agreement dated 26.12.2017, he was not paid his dues and thus, he first sent notice dated 20.03.2018 and then notice under Section 8 of the IBC and then Application was filed before the Adjudicating Authority. The Respondent entered appearance before the Adjudicating Authority and filed Reply disputing that any such Notices were sent or received. It was also claimed (Reply para – 21) that the supply order being relied on for claiming the commission related to “PLB HDPE Duct” and not “PLP Duct Pipe” and that the Appellant was making false claims. The Respondent raised various other contentions also.

2. The learned Adjudicating Authority heard the parties and rejected the claim of the Appellant that “PLP Duct Pipe” mentioned in the Agreement should be construed as “PLB HDPE Duct”. The Adjudicating

Authority found that there was an existing dispute and for this and other reasons, dismissed the Petition which had been filed.

3. We have heard Counsel for both sides. The learned Counsel for the Appellant submitted that the Respondent Company manufactures PLB HDPE Duct Pipes and not PLP Duct Pipes and so the Agreement (copy of which is at Page – 78 of the Appeal) actually related to such product and the Agreement should have been read accordingly. It is stated that PLP means “Permanently Lubricated Pipe” and the word “PLB” actually means “Permanently Lubricated”. Against this, the learned Counsel for the Respondent referred to the Reply filed before Adjudicating Authority and submitted that these are two different types of products and the Appellant cannot try to claim commission relating to product which is not mentioned in the Agreement on which the Appellant is trying to rely on. Respondent is also arguing that Appellant had proposed to Respondent that he will get Orders for PLP Duct Pipes and Respondent entered into agreement so that if such Orders are procured, Respondent will manufacture accordingly and supply.

4. In order to trigger the provisions of the IBC on the basis of Section 9, it is necessary for the Operational Creditor, to show that there is outstanding operational debt and that there is a default. The learned Counsel for Appellant to contend that there was an operational debt, which was in default, referred to the Agreement (Page – 78) which clearly refers to the product as “PLP Duct Pipe” of 40mm x 33mm. The supply

order on which the Counsel for Appellant is relying on is at Page – 82 of the Paper Book. It shows that the product for which the Government of Telangana placed supply order with the Respondent, was relating to “PLB HDPE Duct” and its accessories. Appellant is now claiming that PLP Duct mentioned in the Agreement should have been written with complete description, which remained, and claims that PLP Duct is same product as “PLP HDPE Duct”. On hearing Counsel and perusing Impugned Order, we are unable to accept the submissions of Appellant. Appellant has failed to show debt due.

5. Apart from above, the supply order (Page – 82) which is being relied on by the Appellant itself mentioned in the reference, and it shows that supply order was being given to the Respondent on the basis of RC Agreement dated 05.06.2017. This is clearly a date which is prior to the Agreement dated 26th December, 2017, which is being relied on by the Appellant. The Appellant has failed to show that operational debt existed and thus, we do not find any reason to interfere with the Impugned Order.

The Appeal is rejected.

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

[Kanthi Narahari]
Member (Technical)

/rs/gc