

**NATIONAL COMPANY LAW APPELLATE TRIBUNAL,
PRINCIPAL BENCH, NEW DELHI
Comp. App. (AT) (Ins.) No. 300 of 2022**

In the matter of:

**Durgesh Kumar Sharma
Proprietor, Salasar builders
Vs.**

....Appellant

Rangraj Realtors Pvt. Ltd.

...Respondent

For Appellant: Mr. Amit Agrawal, Ms. Gitanshi Arora, Advocates.

ORDER

(Through Virtual Mode)

26.04.2022: Heard Learned Counsel for the Appellant.

2. This Appeal has been filed against the order dated 25.01.2022 passed by the Adjudicating Authority (National Company Law Tribunal), New Delhi, Bench-IV by which Application filed by the Appellant under Section 9 of the Insolvency and Bankruptcy Code, 2016 ("I&B Code" for short) has been rejected.

3. The Appellant claiming to be Operational Creditor has filed Section 9 Application for outstanding amount of Rs.1,86,900/-. The Adjudicating Authority issued notice and after considering the reply of the Corporate Debtor has dismissed the Application. The Adjudicating Authority while dismissing the Application has returned following findings in paragraph 5:-

*“5. We have heard the arguments of Ld. Counsels for
the applicant and the respondents and perused the case*

records. From the bare perusal of the file it can be inferred that admittedly there is no agreement entered into between parties submitted for supply of building material despite the fact both the applicant is alleged to have been dealing in supply of building material, whereas, the respondent is builder. Moreover, only one bill had been put on record, but the same was never endorsed by any authorized representative of the respondent. Although, the demand notice was issued via speed post and email, however, the respondent simply replied to the email stating, "Thanks for your mail with attachment of demand notice". Later on, when the present petition has been filed by the applicant, the respondent admitted the claim simply. It is pertinent to note that prior to the issuance of above said bill, there was not a single correspondence between them qua raising and demanding of bill amount or supply of material also. There is nothing on record to establish the fact that the respondent ever made any demand of supply of the bricks etc. to the applicant herein. These all facts shows that the bill raised is forged and fabricated to make out false ground to put the respondent under CIRP. These all act and omissions on the part of the applicant and respondent clearly shows that there is an active collusion between them to defraud the other creditors and to facilitate the respondent to enjoy the rigors of the IBC Code. Further, had there been any genuine admission on the part of the respondent, respondent might have paid the disputed amount despite the fact the said petition is pending before this Tribunal year and alleged amount is only of one lac. It is well

settled principle of law that NCLT can't be allowed to be played at the hands of the unscrupulous parties.

In sequel of the above stated facts and circumstances, this tribunal is of affirm view that the present petitioner failed to establish on record that he actually supplied the building material to the respondents and an amount of rupees one lac was due rather the petition is collusive in nature. Hence, the present petition deserves to be dismissed.

Resultantly, the present petition stands dismissed with no order to costs.

File be consigned to records.”

4. Learned Counsel for the Appellant submits that there was no basis for recording the finding against the Appellant of any collusion or holding that bill raised by the Appellant was forged and fabricated. Learned Counsel for the Appellant has also placed reliance on the judgment of this Tribunal in “*Sunil Parmanand Kewalramani vs. Kestrel Import & Export Pvt. Ltd.- Company Appeal (AT) (Ins.) No. 847 of 2020*”.

5. We have considered the submission of the Counsel for the Appellant and perused the record.

6. The observations and conclusion which has been drawn by the Adjudicating Authority are based on the sequence of the events and facts of the case. The Adjudicating Authority has returned the finding that there was not a single correspondence between the Operational Creditor and the Corporate Debtor qua raising and demanding of bill amount or supply of material. No order of supply of material and demand for payment prior to filing

of the Application are the reasons which have been relied and the Adjudicating Authority has come to the conclusion that the bill raised is forged and fabricated and has been raised only for initiation of CIRP of the Corporate Debtor who is the builder. We have also noticed that bill as relied by the Appellant does not contain any GST number which reaffirms the view that bill was a bogus bill prepared only for filing the Section 9 Application.

7. Learned Counsel for the Appellant submits that the mere fact that the amount which was due was small amount does not justify any finding that there was any collusion between the Appellant and the Respondent.

8. We agree with the submission of the Counsel for the Appellant that the quantum of the amount may not be relevant for taking a decision either to reject or admit the Application but on the sequence of the events and the facts which were before the Adjudicating Authority, the Adjudicating Authority rightly came to the conclusion that there was active collusion between the parties to defraud the other creditors and to facilitate the Respondent to enjoy the rigors of the I&B Code.

9. In the facts of the present case, we see no reason to take a different view from one which have been taken by the Adjudicating Authority. The Judgment of this Tribunal in Sunil Parmanand Kewalramani's case was on its own facts and the findings returned were with regard to the facts of the said case. There cannot be any dispute to the proposition that for returning the finding of the collusion, there has to be materials. We are of the view that the present case does not lack material or facts to come to the conclusion of collusion.

10. We do not find any merit in the Appeal. The Appeal is dismissed.

[Justice Ashok Bhushan]
Chairperson

[Shreesha Merla]
Member (Technical)

Anjali/nn