**NATIONAL COMPANY LAW APPELLATE TRIBUNAL**
**PRINCIPAL BENCH: NEW DELHI**

**Company Appeal (AT)(Insolvency) No. 792 of 2022**

**[Arising out of Order dated 02nd July, 2020 passed by the Adjudicating Authority (National Company Law Tribunal, Mumbai Bench, Mumbai) in C.P. (IB) No. 3194/NCLT/MB/2019]**

**IN THE MATTER OF:**

**Shri Balaji Paper Pack Pvt. Ltd.**
**GF No. 2, Shail Building**
**Nr. Swagat Restaurant**
**Office: C.G. Road, Navrangpura**
**Ahmedabad – 380006 (Gujarat)** **...Appellant**

**Versus**

**Laxmi Crockery (Pune) Pvt. Ltd.**
**No. 2 Ganesh Peth**
**Nr. Burdi Road**
**Pune – 411002 (Maharashtra)** **...Respondent**

**Present:**

**For Appellant : Mr. Rajendra K. Golani, Advocate**

**For Respondent : Ms. Anandita Singh, Advocate**

**J U D G M E N T**
**(20th December, 2022)**

**KANTHI NARAHARI, MEMBER (TECHNICAL)**

**Preamble:**

The Present Appeal is filed against the Order dated 02nd July, 2020 passed by the Adjudicating Authority (National Company Law Tribunal, Mumbai Bench, Mumbai) in C.P. (IB) No. 3194/NCLT/MB/2019, whereby the Adjudicating Authority has dismissed the Application filed by the Appellant herein.

**Brief Facts:**

**Appellant's Submissions:**

2. The Learned Counsel appearing for the Appellant submitted the brief facts which necessitated filing the present Appeal. He submitted that the Appellant filed the Application before the Adjudicating Authority invoking Section 9 of the I&B Code, 2016 seeking initiation of Corporate Insolvency Resolution Process against the Respondent (Corporate Debtor) for defaulting in making payment to the extent of Rs.65,20,061/-.

3. The Learned Counsel submitted that Appellant being the Operational Creditor supplied packaging materials to the Respondent and raised invoices for such ongoing supply of packaging material amounting to Rs.45,34,589/- as principal amount. The Respondent even after several requests for payment of the due amount was not paid. Having no other choice but to take legal recourse, the appellant issued a demand notice dated 23.07.2017 to the Respondent which was served on 29.07.2019. The Interest on the operational debt as on 20.07.2019 worked out to Rs.19,85,472/- thus, the total due amount is Rs.65,20,061/-.

4. The Learned Counsel further submitted that the Respondent vide its reply dated 08.08.2019 raised false and frivolous claims to avoid payment of debt due to the Appellant. Having no other alternate the Appellant filed Section 9 Application before the Adjudicating Authority and the Adjudicating Authority dismissed the said Application without appreciating the facts that

the Respondent liable to pay the debt and defaulted in payment which expressly borne out from the records.

**<u>Respondent's Submissions</u>:**

5. The Learned Counsel appearing for the Respondent filed its Reply and submitted that there is pre-existence of dispute in respect of the payment which is subject matter before the Adjudicating Authority and this Appellate Tribunal. It is submitted that the understanding between the Appellant and the Respondent was in relation to packaging of glassware and their supply. The Appellant supplied the goods to the Respondent, however, the goods supplied were defective and a dispute exists in respect of settlement of accounts of the transactions. The issue of dispute was raised by the Respondent in its reply dated 08.08.2019 to the demand notice issued by the Appellant dated 23.07.2019.

6. The Learned Counsel further submitted that the dispute in respect of the payment / transaction is civil in nature and not within the jurisdiction of this Tribunal. It is submitted that even otherwise the claim of the Appellant was barred by limitation. Further, the claim of the Appellant is not maintainable for the reason that the said claim has been set off by the invoices raised against the goods supplied by the Respondent to the Appellant. It is submitted that the Respondent Company is financially solvent and is carrying on successful business operation.

7. In view of the reasons as stated above the Learned Counsel has prayed this Bench to dismissed the Appeal as it devoid of any merit.

**Analysis / Appraisal:**

8. Heard the Learned Counsel appeared for the respective parties, perused the pleadings and documents. After analysing the pleadings, the issues fell for consideration is whether there is:

(a) existence of dispute?

(b) is barred by limitation?

(c) whether the Appellant maintains the pecuniary jurisdiction to entertain the claim?

9. Now we deal with issue (a) regarding existence of dispute:

(i) The Appellant filed an Application under Section 9 of the I&B Code, 2016 before the Adjudicating Authority seeking initiation of Corporate Insolvency Resolution Process against the Respondent on the ground that the Respondent defaulted in making the payment to the extent of Rs.65,20,061/-. The Adjudicating Authority having noticed the invoices raised by the Appellant, however, comes to the conclusion that out of 13 invoices, 11 invoices were time barred and only 2 invoices raised on 31.08.2016 for Rs.2,04,099/- and 1,60,010/- were within the period of limitation. Further, the Adjudicating Authority was of the view that the materials supplied by the Respondent (Corporate Debtor) to the Appellant is more than the principal due claimed by the Appellant, hence the Respondent is entitled for set off the claim made by the Appellant.

(ii) It is an admitted fact that the Appellant issued a demand notice dated 23.07.2019 to the Respondent demanding a sum of

Rs.65,20,061/- including interest. The Respondent vide its reply dated 08.08.2019 to the said demand notice stated that payment referred in the demand notice was set off on the ground that the Appellant lifted the goods from the Respondent and the Appellant was supposed the remit the tax amount to the Respondent so that proper invoices can be raised for the same.

(iii) From the reply of the Respondent dated 08.08.2019, it is evident that the Respondent has not raised any dispute with regard to the very same claim amount prior to issuance of demand notice dated 23.07.2019. Further, in the reply, it is also clear that even the Respondent has not raised invoices on the Appellant for the goods supplied (if any). Having failed to raise any invoices on the Appellant by the Respondent, claiming any dues from the Appellant, the question of set off, the claim between the Appellant and the Respondent does not arise. This Tribunal is of the view that the averments made in the reply by the Respondent is clearly an afterthought only for the purpose of vitiating the proceedings. Further, as per Section 8(2)(a) of the I&B Code, 2016, the existence of dispute, if any or, record of the pendency of the suit or arbitration proceedings filed before the receipt of such notice or invoice in relation to such dispute. As per the above position of law the dispute must be specific with regard to the same amount. In that present case, the Respondent failed to raise any dispute prior to issue of demand notice and claim of set off is only an afterthought as stated (supra). Accordingly, the issue is answered.

(b) Whether the claim is barred by limitation & (c) maintains the pecuniary jurisdiction to entertain the claim?

Now we deal with both the issues together:

(i) The Learned Counsel for the Respondent vehemently contended that claim is barred by limitation since the application filed after 3 years from the date of default. The Adjudicating Authority extracted the invoices raised by the Appellant in a tabular column. From the perusal of the invoices, the Appellant raised 13 invoices amounting to Rs. 45,34,589/- towards principal due. The Adjudicating Authority taken a stand that out of 13 invoices claimed by the Appellant 11 invoices are time barred i.e. the last invoice dated 23.08.2016 and the Application under Section 9 was filed on 26.08.2019, therefore, it is beyond 3 years as per Section 137 of the Limitation Act. However, the (2) invoices both dated 31.08.2016 are within the period of limitation, since the application filed on 26.08.2019. Having taken into consideration the 2 invoices which are within the period of limitation, the Adjudicating Authority failed to consider that the amount even for the 2 invoices satisfies the minimum threshold prescribed under Section 4 of the I&B Code, 2016 (pre-amended). As per Section 4 of the I&B Code, 2016 the minimum threshold was Rs.1,00,000/- and the amount for the 2 invoices both dated 31.08.2016 was Rs.3,64,100/-, thus, it exceeds the minimum threshold as prescribed under the law prior to the amendment. The Adjudicating Authority miserably failed to take into consideration the pecuniary jurisdiction under which the application ought to have been admitted. Thus, the observation of the Adjudicating Authority is factually incorrect with regard to the non-maintainability of the application.

Thus, the issues are answered against the Respondent.

10. The Adjudicating Authority having noticed that the claim of the Appellant is more than Rs.1,00,000/- and is within the threshold limit, however, was of the view that the claim made by the Respondent is more than the claim made by the Appellant. The said observation is without any basis. Further the Adjudicating Authority was of the view that though the Corporate Debtor raised the claim after the issuance of demand notice, however, it observed that the goods were delivered by the Corporate Debtor to the Appellant before issuance of demand notice and raising of invoices was delayed by the Corporate Debtor, is in our view absurd and without any basis.

11. Viewed in that perspective, this Tribunal comes to an irresistible and inescapable conclusion that the order passed by the Adjudicating Authority is per-se illegal and the same is hereby set aside.

**Conclusion:**

12. Resultantly, the Company Appeal is allowed with a direction to the Adjudicating Authority to admit the application and initiate Corporate

Insolvency Resolution Process (CIRP) proceeding against the Respondent / Corporate Debtor. No orders as to cost.

**[Justice Ashok Bhushan]**
**Chairperson**

**[Mr. Kanthi Narahari]**
**Member (Technical)**

**[Mr. Barun Mitra]**
**Member (Technical)**

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