

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
AT CHENNAI
(APPELLATE JURISDICTION)
TA (AT) No.206/2021
(Company Appeal (AT) (Ins) No.1285/2019)

In the matter of:

APL Apollo Tubes Limited

... Appellant

V

Tanisha Scaffolding (India) Private Limited

...Respondent

Present :

For Appellant : Mr. Rishab Singh, Advocate

For Respondent : Mr. Gaurav Kumar Singh, Advocate

ORDER
(Hybrid Mode)

11.06.2024:

The Company Appeal (AT) (Ins) No. 1285/2019 arises from the Impugned Judgment, as rendered by the Learned Adjudicating Authority on 05.09.2019 by virtue of which the Application preferred by the Appellant under section 9 of the I & B Code for the initiation of CIRP proceedings against the Respondent has been rejected.

The case of the Appellant is that he being the Operational Creditor, as having been incorporated under the Companies Act on 24.02.1986, was engaged in the business of manufacture of steel pipes and tubes. The Respondent was engaged in marketing the products as manufactured by the Appellant. In brief it is submitted by the Appellant that he had supplied certain manufactured products for the purposes of marketing to the Respondent, but the amount against such supplies was not remitted and fell due to be paid and therefore he filed the Application under section 9 of I & B, Code on the ground that prior to the last

invoice as issued on 20.06.2017 by him, there were other three prior invoices issued by him, which were not honoured by the Respondent by making the remittance of the amount which was due from him and that, as a consequence thereto it has necessitated issuance of the notice of Demand by him under section 8(1) of I & B Code on 01.02.2018 on the Respondent (Corporate Debtor). It is the case of the Appellant that the notice dated 01.02.2018 was also served upon the Corporate Debtor on 05.02.2018.

It is seen from the submissions that the contents of the Demand Notices and the reasons thereof have not been objected by the Respondent in any manner whatsoever by submission of any written reply/objection, and that the amount thus claimed in the Demand Notice dated 01.02.2018, was never paid to the Appellant. Consequently, as a result of non-receipt of the dues as raised in the Demand Notice, under section 8 (1) and non-receipt of notice of dispute under section 8(2), the Appellant has filed an Application under section 9 of I & B Code, for initiation of the CIRP proceedings. However, the said Application has been rejected by the Impugned Order, contending thereof that the Applicant's claim pertaining to the amount due to be paid to the Appellant by the respondent as per the Demand Notice and the accompanying invoices has not been supported by the respective Purchase Orders so as to justify the amount claimed by the Appellant.

Since, the Learned Adjudicating Authority had rejected the Application under section 9 of I & B Code, hence, the Appeal. The Appeal was initially

preferred with a Delay Condonation Application and the respondent was served notice on 18.11.2019. Despite the issuance of the notice and despite several orders having been passed by this Tribunal thereafter, for exchange of pleading, it is the admitted case that as on today, the respondent has not filed any Counter Affidavit till date, coupled with the fact that the Respondent had not even attempted to comply with the order of this Tribunal dated 12.04.2024 by filing the Written Submissions as it was called for by the said order. Not even that, the Order Sheet itself reflects dereliction on part of the Respondent, who had not diligently participated in the proceedings.

It is argued by the Learned Counsel for the Appellant that the Impugned Order rendered by the Learned Adjudicating Authority on 05.09.2019, has in a way carved out the case for the Respondent, in the absence there being any specific pleading to the contrary, to the effect as to what implication the non-filing of the Purchase Order would have on the invoices thus issued by the Appellant to the Respondent, which resulted in raising of the claim of demand and ultimately led into the issuance of the notice under section 8 of I & B Code. In fact, the reason assigned by the Learned Adjudicating Authority in holding the amount claimed by the Appellant under section 8 and consequentially by initiating the proceedings under section 9 of I & B Code as 'Debt not Due' is that there was no documentary evidence which was furnished by the Appellant to establish that the debt was due and payable. But the said inference as it has been drawn by the Learned Adjudicating Authority has been merely on the basis of a

hypothetical interpretation given to the contents of the invoices without there being any evidence or pleadings to the contrary. There was no occasion for the Learned Adjudicating Authority, to draw an inference in the absence of there being any pleading to the contrary made by the Respondent as to what implications the Purchase Order would have over the Demand Notice and the prior invoices which were issued by the Appellant, with regard to the amount due to be paid by the Appellant.

Not even that, even in the Appellate proceedings, the Respondent despite several opportunities having being granted by this Tribunal, has not filed any objections or even a written statement to controvert pleading raised by the Appellant in this Appeal.

It is a trite law that when the Courts/Tribunals created under a statute while adjudicating upon a civil right between the parties before the Court or the Tribunal concerned have to confine their finding limited to the extent of respective pleadings and evidence laid by the parties. The Tribunals or the Courts are not expected to substitute their own stand or finding in supporting case of either of the parties before it in the absence of there being any pleading raised before it to controvert the pleading raised by the other side in support of their case. Rather the Courts/Tribunals should refrain from stepping into the shoes of a litigating party by substituting their own finding in the absence of there being any pleading evidence.

It is the settled law which needs no further elaboration that in a judicial proceeding where despite orders being passed by the court or the Tribunal calling upon the opposite side to file objection to the pleading raised by the Appellant/Applicant, if the same is not controverted, it will be deemed to have been accepted by the other side and would be taken as to be true. Be that as it may, since at no point of time, the Respondent had filed any objection to the contrary to the proceedings under section 9 of I & B Code before the Adjudicating Authority, that is, NCLT, Bangalore Bench, we are of the view that it would meet the ends of justice if the Impugned Order dated 05.09.2019 is quashed and the matter is remitted back to the NCLT, Bangalore Bench to decide CP(IB)No.116/BB/2018 afresh after providing an opportunity to the Respondent to file their objection to the Application under section 9 and to decide the same afresh.

Considering the fact that the proceedings drawn on dates as back as in 2016, it is hoped and trusted that the Learned Adjudicating Authority will make all efforts to decide proceedings as expeditiously as possible. Subject to the above, the Company Appeal would stand allowed.

[Justice Sharad Kumar Sharma]
Member (Judicial)

[Jatindranath Swain]
Member (Technical)

RO/TM