

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

Company Appeal (AT) (Insolvency) No. 1599 of 2024

IN THE MATTER OF:

Ashok Kumar Atmaram Sharma

...Appellant

Versus

Shri. Balaji Paper Pack Pvt. Ltd & Anr.

...Respondents

Present:

For Appellant : Mr. Siddharth S. Chapalgaonkar and Ms. Sneha Botwe, Advocates.

For Respondents : Mr. Rajendra Kumar Gulani and Ms. Reetu Sharma, Advocates.

O R D E R
(Hybrid Mode)

13.08.2024: Learned Counsel for the Appellant submits that against the rejection of Section 9 Application of the Operational Creditor, an Appeal was filed, which Appeal was disposed of on 20.12.2022, where this Tribunal returned the finding that at least two invoices were within the period.

2. Learned Counsel for the Appellant has referred to the Paragraph 9(b)(i), where following has been stated by this Tribunal:

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

(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.”

3. This Tribunal by the Order dated 20.12.2022, directed the Adjudicating Authority to admit the Section 9 Application of the Operational Creditor. Subsequent to the Order, an I.A. was filed by the Corporate Debtor being I.A. No. 3752/2023 where the Appellant offered to pay the entire amount covered by two invoices along with the interest i.e., amount of Rs.3,64,000/- due for the two invoices dated 31.08.2016 along with the interest accrued.

4. However, the Operational Creditor did not accept the offer and the Adjudicating Authority by the Impugned Order has admitted Section 9 Application and dismissed the I.A. No. 3752/(MB)/2023. Aggrieved by the Order this Appeal has been filed.

5. Learned Counsel for the Appellant submits that finding that only two invoices were due and Corporate Debtor has offered to pay the entire amount, Adjudicating Authority ought not to have admitted.
6. Learned Counsel for the Respondent refuting the submissions, submits that entire amount of Rs.45,34,589/- was required to be paid by the Corporate Debtor, hence the Settlement was rightly not accepted by the Operational Creditor.
7. Submissions raised by the Counsel for the Parties needs consideration.
8. Issue Notice.
9. Let Reply be filed within three weeks. Rejoinder may be filed within further three weeks.
10. Subject to the Appellant depositing the amount of Rs.3,64,000/- with interest of 15% from 31.08.2016 till date within four weeks from today in the interest bearing Fixed Deposit receipt in the name of Registrar National Company Law Appellate Tribunal, further proceedings in pursuance of the Impugned Order dated 01.08.2024 shall remain stayed.

List this Appeal on **24th September, 2024.**

**[Justice Ashok Bhushan]
Chairperson**

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

**[Arun Baroka]
Member (Technical)**

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