

**NATIONAL COMPANY LAW APPELLATE TRIBUNAL, NEW DELHI**

**Company Appeal (AT) (Insolvency) No. 261 of 2017**

**IN THE MATTER OF:**

**Shrivarad Polyfab**

**...Appellant**

**Vs.**

**OLAM Agro India Pvt. Ltd.**

**...Respondent**

**Present: For Appellant: - Mr. Vivek Dalal, Advocate.**

**For Respondent:- Mr. Vishnu Langawat, Advocate.**

**ORDER**

**01.02.2018** – The Appellant (‘Operational Creditor’) filed an application under Section 9 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as “I&B Code”) for initiation of ‘Corporate Insolvency Resolution Process’ against the Respondent- ‘Olam Agro India Pvt. Ltd. (‘Corporate Debtor’). The Adjudicating Authority (National Company Law Tribunal), Chandigarh Bench, by impugned order dated 3<sup>rd</sup> October, 2017 rejected the application on the ground of pendency of a dispute giving rise to the present appeal.

2. Earlier when the matter was taken up, learned counsel for the Appellant submitted that “C” Form on which the Adjudicating Authority relied upon to hold that there is a dispute, is just contrary to the

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decision of the Appellate Tribunal. The “C” Form issued by the parties only shows that party has received the goods. It is further submitted that whatever the defects were there has been made good before issuance of the “C” Form.

3. Learned counsel appearing on behalf of the Respondent submits that mere issuance of “C” Form does not amount to liability of debt or default of debt. There being a dispute in existence the Adjudicating Authority rightly dismissed the application.

4. We have heard learned counsel for the Appellant and learned counsel for the Respondent.

5. From bare perusal of the impugned order, we find that the Adjudicating Authority rightly dealt with the matter of Form “C” and observed as follows:

*“19. The Primary document to support this contention of the petitioner is the issuance of Form C dated 20.06.2017 by the respondent-corporate debtor in respect of all the seven invoices. I am of the view that the transaction between the parties having taken place, the respondent was bound to issue Form C and in any case this by itself cannot be said to be a*

*settlement of dispute between the parties for enabling the petitioner to trigger the insolvency resolution process.”*

6. The Adjudicating Authority also noticed the response of the Respondent in reply to the demand notice where the Respondent has raised the objection relating to the quality of the goods as quoted hereunder:

*“Our Client would like to state that our client has retained the aforesaid amount of INR 30,15,548/- towards following as it was our client which has suffered damages and losses due to supply of sub-standard quantities of PP Bags by your client which was duly communicated to your client numerous time:-*

<b>Sr. No.</b>	<b>Particular</b>	<b>Amount (in Rs.)</b>
1.	Cost of Rejected Bags (Number 56000)	978880/-
2.	Loss due to damaged Bags in S1 (Grade-Sugar) and S2 (Grade-Sugar): Debit Note raised to your client.	2454936/-
3.	Loss due to damaged Bags in M (Grade-Sugar)	10065238/-
	<b>GRAND TOTAL</b>	<b>13499054/-</b>

”

7. In view of the fact that there is an existence of dispute relating to quality of goods supplied by the Appellant, we hold that the Adjudicating Authority rightly refused to entertain the application under Section 9 of the 'I&B Code'. For the reasons aforesaid, we dismiss the appeal with liberty to the Appellant to move before the appropriate forum for appropriate relief. No cost.

(Justice S.J. Mukhopadhaya)  
Chairperson

(Justice Bansi Lal Bhat)  
Member(Judicial)

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