

Case Snippets

Volume 03, Number 33 (August 13, 2020)

M/s Allied Silica Limited Versus M/s Tata Chemicals Limited

[Company Appeal (AT) (Insolvency) No. 1522 of 2019 dated 10th August 2020 NCLAT]

Sec 9 of IBC - Application for initiation of corporate insolvency resolution process by operational creditor

In the present case the Appellant (Operational Creditor) and the Respondent (Corporate Debtor) entered into a Business Transfer Agreement (BTA) on 07 April 2018 for the transfer of undertaking on a Slump Sale basis under Section 2(42C) of the Income Tax Act, 1961 at a lump sum amount of Rupees One Hundred Twenty Three Cores only (Rs 123 Crores) as per the provisions of Business Transfer Agreement.

After due compliance and completion of the "Condition Precedent", relating to the transfer of Undertaking on Slump Sale, the Compliance notice was submitted to the Corporate Debtor on 04 June 2018, and same was acknowledged by the Corporate Debtor. A satisfaction letter was issued to the Operational Creditor on 09 June 2018. Slump sale was consummated on 18 June 2018 and the possession of Undertaking was handed over by the Operational Creditor to the Corporate Debtor on the same day.

OC issued invoice Dt.18 June 2018 of Rs 123 Crores in respect of the consideration for the transfer of Undertaking and the Corporate Debtor made part payment of Rs 65,19,00,000 and balance outstanding consideration, as on





18 June 2018, remained Rs. 58 Crores. Appellant filed an application under Section 9 of the Insolvency and Bankruptcy Code, 2016 before National Company Law Tribunal, Mumbai Bench but same was rejected on dated 15th November 2019 mainly on the ground of pre-existing dispute. Hence, present appeal.

NCLAT Held as follow:- On perusal of the documents submitted by the parties, it is evident from the Letter dated 08.01.2019 which is signed by both the parties, that the Applicant had failed to complete the Tranche II Conditions Precedent as a result of which the Corporate Debtor had exercised its right under the BTA and set-off and adjusted the Tranche III payment of Rs 6,00,00,000/-. It is further evident from the Letter of Corporate Debtor dated 06.03.2019, wherein the Corporate Debtor had demanded a refund from the Applicant of Rs 15.01 Crores along with interest for violation of terms of Letter dated 08.01.2019 by the Applicant, in the same Letter the Company Appeal (AT) (Insolvency) No. 1522 of 2019 18 of 18 Corporate Debtor had also disputed that the Applicant is in non-compliance of the BTA and therefore is not liable to receive Tranche II and Tranche III payment under the BTA. These disputes by the Corporate Debtor are raised before the receipt of demand notices. Further, it is also pertinent to note that the Corporate Debtor had replied to the Demand Notices within the statutory period of 10 (Ten) days raising disputes with regards to the claim of Applicant and noncompliance of the BTA by the Applicant. Therefore, in the facts and circumstances of the present case, we are satisfied that there is a plausible contention in the defence raised by the corporate debtor which requires further investigation and that the alleged “dispute” is not a patently feeble legal argument or an assertion of fact unsupported by evidence.

Appeal dismissed.

