

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

Company Appeal (AT) (Insolvency) No. 568 of 2024

IN THE MATTER OF:

N.V. Aluminium Cast Pvt. Ltd.

...Appellants

Versus

APL Metals Ltd.

...Respondent

Present:

For Appellant : Ms. Kanishk Kejriwal and Ms. Soumya Dutta, Advocates

For Respondent : Mr. Rishav Banerjee, Mr. Patita Paban Bishwal and Ms. Suranjana Chatterjee, Advocates

ORDER
(Hybrid Mode)

05.09.2024 Heard Learned Counsel for the Appellant as well as Learned Counsel appearing for the Respondent.

This appeal has been filed against the order dated 23.01.2024 passed by National Company Law Tribunal, Division Bench, Court-II, Kolkata by which Section 9 Application filed by the Appellant/Operational Creditor has been rejected. Adjudicating Authority in the impugned order has returned following findings in paragraphs 22, 23, 24 and 29:

“22. Thus, in terms of the IT assessment order dated 30.12.2022 and the submissions made by the Learned Counsel, we would infer that the claim of the Operational Creditor filed in this application based on the bills is disputed by the Income Tax Authority itself and there is no stay order on the assessment order dated 30.12.2022.

23. The Income Tax Assessment order dated 30.12.2022 for the AY 2021-2022 categorically reveals evasion of GST, in Para

12 at Page 7 of the order. In Para 12.2. of the Assessment order dated 30.12.2022, mentions as under:

"12.2. From the above incident reports, it was ample clear that the entities against which incident reports have been generated by the DGGI, Kolkata were in bogus billing and since M/s APL Metals Limited was found reporting purchases from these entities, the same are also bogus."

24. *Even for the Financial Year of 2021-22 as recorded in the IT Assessment Order, more than 67% of the sales made by the operational creditor to the corporate debtor is bogus which is also contended by the authorized representative of the operational creditor. The Operational Creditor has not been able to conclusively prove that the defaulted Invoices are not the bogus Invoices.*

29. *It appears that this application has been filed under Section 9 of the I&B Code, 2016 based on bogus and disputed invoices raised by the Learned Assistant Commissioner of Income Tax Central CIR 3(3), Kolkata and thus, the application is a frivolous and hypothetical one with malicious intent for any purpose other than for the resolution of insolvency. Hence, we are of the considered view that to prevent the parties from coming up with such an application, we feel it appropriate to impose a penalty by invoking the provisions of Section 65 of the Code, of Rs. One Lakh upon the Applicant herein."*

Adjudicating Authority has held that no reliance can be placed on the invoices, which has been relied by the Operational Creditor since the Income Tax Authority has found the invoices as bogus.

Learned Counsel for the Appellant challenging the order contends that the Assessment Order which was relied by the Adjudicating Authority was Assessment Year 2021-22. Whereas, the transactions under which the invoices were raised, they relate to the subsequent Assessment Year i.e. Assessment Year 2022-23. The reliance of the Adjudicating Authority on the order of Income Tax Authority of the Assessment year 2020-21, 2021-22 was misplaced.

It is submitted that Adjudicating Authority while rejecting the application has imposed cost of Rupees One Lakh in para 29.

Mr. Banerjee, Learned Counsel appearing for the Respondent submitted that the Assessment orders have been also passed for the relevant Assessment Year 2022-23 of which the invoices are related i.e. 29.03.2024, which order was passed after hearing the promoters of the Corporate Debtor also. Hence, the submission of the Appellant that reliance of the Assessment order by the Adjudicating Authority was misplaced, cannot be accepted.

We have considered submission of Counsel for the parties and perused the record.

The Adjudicating Authority has returned categorical finding that the Income Tax Department has found the invoices bogus, hence, the application was rejected, under Section 9 which was filed by the Appellant. The submission advanced by the Counsel for the Appellant that reliance on Assessment Year 2021-22 could not have been relied is now no more available in view of the relevant assessment orders of the Income Tax Authority passed

for the year 2022-23 during which the relevant invoices are covered. The said order was passed after hearing the Promoters of the Corporate Debtor as submitted by Learned Counsel for the Respondent. Hence, the findings are now re-affirmed that invoices which are bogus could not be relied for initiating any insolvency proceeding against the Corporate Debtor.

We thus, are of the view that no grounds have been made out to interfere with order rejecting Section 9 Application. However, rejection of Section 9 Application shall not preclude, the Appellant to take such remedy in law as available.

In the facts of the present case, we are of the view that imposition of cost in paragraph 29 deserves to be deleted. The said cost is deleted.

The Appeal is dismissed, subject to above.

**[Justice Ashok Bhushan]
Chairperson**

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

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

pks/nn