

NATIONAL COMPANY LAW APPELLATE TRIBUNAL, NEW DELHI

Company Appeal (AT) (Insolvency) No. 861 of 2020

In the matter of :

Niyati Chemicals

... Appellant

Vs.

Minepro Minerals Pvt. Ltd.

...Respondent

Present:

Appellant: Mr. Surjan Singh Shekhawat, Advocate.

ORDER

08.10.2020 - The grievance of the Appellant is that they have not been considered as Financial Creditor under I&B Code, 2016 by the Adjudicating Authority vide order dated 28.07.2020.

2. The Appellant has filed an application for condonation of delay of 14 days vide I.A No. 2311/2020. The delay mainly relates to prevailing pandemic caused by Covid-19 and the Appellant being a senior citizen. Heard the counsel for the Appellant and allowed the said IA.

3. The Appellant has also filed I.A No. 2312/2020 seeking exemption from filing certified true copy of the impugned order in original with Memorandum of Appeal. Due to pandemic – Covid -19 – the Appellant could not collect the certified copy of the impugned order in original as the physical interaction in the Adjudicating Authority was restricted/denied. Heard the counsel for the Appellant and allowed the same.

4. The Appellant, an exporter, was in business relationship during 2016 & 2017 with the Respondent. The Respondent was the manufacturer/producer of the processed Bentonite Powder. The Appellant is claiming that they have extended unsecured loan of Rs. 20 lacs to Respondent on 25.04.2017 and is also accepting that they have purchased the said powder of Rs. 2,88,400/- on 21.06.2017 from Respondent and has adjusted the amount from said loan amount of Rs. 20 lacs. The Appellant has confirmed that they

have purchased 360 MTS of said powder from the Respondent for export to Dubai through chain transactions involving multiple parties. The Appellant has also submitted that it has provided further unsecured loan of Rs. 2,50,000/- on 23.06.2017 to Respondent and the same was repaid to them on 28.06.2017.

5. Heard the counsel for the Appellant at length. The 'Financial Debt' means a 'Debt' alongwith interest, if any which is disbursed against the consideration for the time value of money as per section 5(8) of the I&B Code, 2016. We have gone through the impugned order passed by the Adjudicating Authority which is a reasoned order and includes the ledger account in the book of Respondent about the flow of money and supply of goods. It is very much clear that the Appellant was advancing the money for supply of above powder and the Respondent after manufacturing was supplying the same to the Appellant. No doubt, these are Commercial **Advances** during the business dealings. As far as I&B Code, 2016 is concerned "providing advance against business dealings" is not covered under 'Financial Debt' and hence Section 7 of I&B Code, 2016 cannot be invoked for such transactions. We agree with the Adjudicating Authority, the case is devoid of merit both on facts and law and hence, require to be dismissed and hence the Appeal is dismissed.

6. However, this order will not preclude the Appellant to take action for recovery of money under the relevant laws. No order as to costs.

[Justice Bansi Lal Bhat]
Acting Chairperson

[Dr. Ashok Kumar Mishra]
Member (Technical)

[Shreesha Merla]
Member (Technical)

Rk/g