

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

Company Appeal (AT) (Ins.) No. 149 of 2022

IN THE MATTER OF:

M/S MAHADEV TRADING COMPANY,

Through Its Proprietor

Mr. Hiteshbhai Rasiklal Upadhyay,

Having Registered Office At:

GF-11, Alien Complex, Nizampura Road,

Vadodara - 390002

...Appellant

Versus

M/S SUPREET CHEMICALS PVT. LTD.

Bearing CIN No. U24231GJ1992PTC017944,

Having Registered Office At:

A1/5402, Fourth Phase, GIDC Vapi, Gujarat

T-Balsad, Gujarat - 396195

...Respondent

Present:

For Appellant:

**Mr. Aditya Shukla, Proxy Counsel for Mr. Atul
Sharma, Adv.**

For Respondents:

Mr. Narendra Jain, Adv.

J U D G M E N T

Per: Justice Rakesh Kumar Jain:

This appeal is directed against the order dated 23.03.2021 passed by the Adjudicating Authority (National Company Law Tribunal, Ahmadabad Bench, Court-I) by which an application filed under Section 9 of the Insolvency and Bankruptcy Code, 2016 (in short 'Code') by the Operational Creditor (M/s Mahadev Trading Company) to initiate the Corporate Insolvency Resolution Process (in short 'CIRP') against the Corporate Debtor (M/s Supreet Chemicals

Pvt. Ltd.) on account of default of an amount of Rs. 2,28,72,166/- with interest as on the date of default i.e. 22.07.2016 has been dismissed on the ground of lack of evidence of having supplied the alleged goods.

2. In brief, the case set up by the Appellant is that the Respondent had approached it for supply of chemical substances such as caustic soda flakes, acid slurry, phosphoric acid etc. which was supplied as per demand of the Respondent in respect of which 24 invoices were raised w.e.f. 06.07.2016 to 23.10.2016 for a total amount of Rs. 2,28,72,166/-. According to the Appellant, the Respondent paid an amount of Rs. 9,65,130/- against invoice no. 30 which was raised on 06.07.2016 for an amount of Rs. 10,41,390/- and apart from this payment, the total outstanding principal amount is Rs. 2,19,07,036/-. It is alleged that before filing the application under Section 9 of the Code, the Appellant issued the demand notice in terms of Section 8 of the Code on 15.02.2019. The Appellant received a letter from the Respondent wherein it had denied the liability much less the outstanding amount as claimed.

3. In the Reply filed by the Respondent, it was claimed that the invoices raised by the Appellant are bogus in nature. The Appellant has failed to furnish any supporting documents such as weighing slip, challan and purchase orders issued by the Respondent to substantiate its claim. It was further denied by the Respondent that any part payment to the tune of Rs. 9,65,130/- against invoice no. 1 dated 06.07.2016 was made, however, the invoice no. 30 for an amount of Rs. 10,41,290/- was admitted for which the payment has allegedly been made.

4. The Adjudicating Authority, in the impugned order, has made a reference of all the alleged invoices and observed that these transactions are not for supply but for other purposes and came to a conclusion that the Appellant has failed to discharge his burden to bring on record cogent evidence that the goods were actually supplied to the Respondent.

5. On 07.09.2022, the case was thoroughly argued and Counsel for the Respondent made an offer that if the Appellant prove the claim made in the Application filed under Section 9 of the Code with documents within a period of one month then it would still be happy to pay the alleged amount. In this regard order was also recorded which is as under:

“During the course of hearing, counsel for the Respondent has made a candid offer to the Appellant that the Respondent is ready and willing to pay the amount as claimed by the Appellant in case it is so proved with documents. In this regard, counsel for the appellant prays for one month time. List this appeal on 10.10.2022.”

6. Today, Counsel for the Appellant, fairly conceded that it could not produce the documents before the Respondent for the purpose of claiming the amount.

7. We have heard Counsel for the parties and after examining the record are of the considered opinion that there is no error in the impugned order because the application filed by the Appellant was dismissed by the Adjudicating Authority on the ground that the Appellant has failed to lead the evidence much less cogent to prove supply of goods and when an opportunity was given to the Appellant before this Tribunal and the case was adjourned for a period of one month on the offer made by the Respondent that in case the Appellant produces before it documents even now to prove its case then he

shall make the payment. However, the Appellant has miserably failed to produce the documents before the Respondent even within a period of one month and that too on a candid statement made by the Respondent that it would honour its liability in case the evidence is produced before it.

8. Thus, in view thereof, the absence of any evidence much less cogent, the present appeal lacks merits and is thus hereby dismissed. No costs.

**[Justice Rakesh Kumar Jain]
Member (Judicial)**

**[Mr. Kanthi Narahari]
Member (Technical)**

New Delhi

03rd November, 2022

Sheetal