

IN THE NATIONAL COMPANY LAW TRIBUNAL, NEW DELHI
PRINCIPAL BENCH

(IB)-40(PB)/2018

IN THE MATTER OF:

Agarwal Coal Corporation Private LimitedPetitioner
v.
Rathi Steels & Power LimitedRespondent

SECTION : UNDER SECTION 9 OF IBC, 2016

Order delivered on 15.01.2018

Coram:

CHIEF JUSTICE (Retd.) M.M.KUMAR
Hon'ble President

S.K. MOHAPATRA
Hon'ble Member (T)

For the Petitioner(s): **Mr. Rakesh Kumar, Ms. Preeti Kashyap, Ms. Chetna Bisht and Mr. Hitesh Raj Singh, Advocates**

ORDER

There is no evidence on record in the form of either bank statement or by virtue of CIBIL account showing that the payment has not been made against the invoices which have been shown in the pleadings. As a matter of fact, in reply to the notice issued under Section 8 of the Insolvency and Bankruptcy Code, 2016 the operational debtor has claimed that payment has been made against those very invoices which has now been disputed by the learned counsel for the applicant before us by stating that the payment was made against the earlier invoices. This is neither pleaded in the application nor any counter reply was sent by the applicant to the corporate debtor. There is no bank statements on record or CIBIL account which could be admitted under the Bankers Evidence Act to show the outstanding liability of the operational debtor. Accordingly, we find that the application is premature and the same is dismissed at this stage. We grant liberty to the applicant to file fresh one after removing the aforesaid lacuna.

Sd-
(M.M. KUMAR)
PRESIDENT

Sd-
(S.K. MOHAPATRA)
(MEMBER TECHNICAL)

15.01.2018
Vineet