

IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH

T.C.P. No. 353/I&BP/2017

Under section 9 of IBC, 2016

In the matter of
Maxim Containers Company
.... Applicant

v/s.

BHD Industries Ltd.
.... Respondent

Order delivered on: 04.09.2017

Coram: Hon'ble Mr. B.S.V. Prakash Kumar, Member (Judicial)
Hon'ble Mr. V. Nallasenapathy, Member (Technical)

For the Petitioner : Mr. N.K. Gandhi
For the Respondent : Mr. B.B. Parekh, Adv. a/w Deepti Mukesh

Per B. S. V. Prakash Kumar, Member (Judicial)

ORDER

It is a Company Petition originally filed u/s 433 & 434 of Companies Act 1956 on 21.09.2016 before the Honorable High Court of Mumbai on the ground that the Corporate Debtor defaulted in paying ₹6,40,055 plus interest towards goods supplied by the Petitioner herein, hence this Company Petition.

2. Thereafter owing to jurisdictional transfer, this petition has been transferred to NCLT to deal the same u/s 9 of Insolvency and Bankruptcy Code. Before filing it u/s 433 & 434 of Companies Act 1956, the petitioner on 22.12.2015 issued notice to the corporate debtor stating that the Corporate Debtor was placed Purchase Order for aluminum collapsible tubes with the Petitioner on 09.01.2015, accordingly, the petitioner sold and delivered the goods i.e. aluminum collapsible tubes as per the instructions of the Corporate Debtor by raising invoices bearing Nos. 534 dated 23.02.2015, 536 dated

24.02.2015, 550 dated 05.03.2015, and 559 dated 08.03.2015. Since payment had not been paid by the corporate debtor, the Petitioner time and again demanded for payment of ₹6,40,055 from this Corporate Debtor, but having failed to make payment, the petitioner called upon the debtor to pay the outstanding amount of ₹6,40,055 plus interest thereon, failing which, the petitioner would file winding up petition against the corporate debtor. To which, the corporate debtor filed reply dated 13.01.2016 disputing this claim stating that since the Petitioner sent defective goods, it was put to the petitioner about tubes leaking because of the improper threading at nozzle/improper caps and also about Troge Medical GMBH saying that the problem of leaking went beyond all reasonableness resulted into rejection of the part of the said order of the Germany company, by which the corporate debtor had to compensate ₹12.50lacs to the Germany company, hence after deducting payment towards defective goods, the debtor released payment ₹18,70,623 by cheque No. 214970 dated 19.07.2015 towards goods without defects. The debtor says since the debtor made payment towards the goods having no defect, the same is to be considered as full payment towards liability raised in this claim.

3. On perusal of the Company Petition filed before the Hon'ble High Court and thereafter Form 5 filed before this Bench and reply from the Corporate Debtor, it appears that this Corporate Debtor disputed about quality of goods even before making payment of ₹18,70,623 as full and final settlement by deducting amount towards the defective goods supplied by the Petitioner herein. Apart from this, to justify by the points raised by the Corporate Debtor's Counsel, the Counsel has filed a letter dated 30.07.2014 sent by Troge Medical GmbH stating that the Corporate Debtor supplied defective goods which the Petitioner supplied to the Corporate Debtor. In view of the same, the Corporate Debtor wrote a letter on 09.07.2015 to the petitioner herein saying that they debited the petitioner's account by ₹6,25,000 to partly compensate the loss incurred by them due to quality complaint by Troge Medical GmbH in respect to the goods supplied by the petitioner. Apart from this, the Corporate Debtor also replied to their demand notice u/s 434 (1) of Companies Act 1956 stating that the Corporate Debtor made full and final payment on 09.07.2015 itself after deducting the loss incurred owing to the

defective goods. By going through the material placed by the petitioner and the Corporate Debtor herein, it appears that this Corporate Debtor has confirmed long before receiving the demand notice u/s 434 of the Companies Act 1956 to the Petitioner herein saying that they supplied defective goods, therefore the amount was paid only towards goods that have no defects.

4. Since there is a pre-existing dispute from 2014 itself, it cannot now be considered that this Corporate Debtor manipulated something to set up defense to frustrate the claim made by the petitioner.

5. Therefore, we are of the view that the claim made by the Petitioner herein has been disputed by the Corporate Debtor in the year 2014 itself, thereafter made payment in the year 2015 as full and final settlement towards the goods upon which no issue was raised by the Petitioner. Hence, for the reasons stated above, we have found no merit in this case, accordingly the same is hereby **dismissed**.

Sd/-

V. NALLASENAPATHY
Member (Technical)

Sd/-

B. S.V. PRAKASH KUMAR
Member (Judicial)