

IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH

TCP 766/I&BP/NCLT/MAH/2017

Under Section 9 of the I&B Code, 2016

In the matter of
MANIKA MOULDS PVT. LTD.

....

PETITIONER

v

ALFA BATTERIES PVT. LTD.

....

RESPONDENT

Order delivered on 26.09.2017

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

For the Petitioner: 1. Mr. Dharmesh Shah, Adv. for Petitioner
a/w Adv. Ulka Shinde, i/by GMS Legal

For the Respondent: 1. Mr. Nikhil Jayakar, for Respondent
i/b Binal Rajsekhar

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

ORDER

Oral order dictated in the open court on 26.09.2017

It is a Company Petition u/s.433 & 434 filed under Companies Act, 1956 by Operational Creditor against Corporate Debtor on the ground that this Corporate Debtor, who received goods, failed to make repayment in respect to invoices amounting to ₹15,84,873. On seeing the Corporate Debtor defaulted in making repayment, this Petitioner on

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2.7.2015 issued a statutory notice u/s.434 of the Companies Act, 1956 to the corporate debtor, since there was no repayment even after notice was issued, the Petitioner filed winding up petition before Hon'ble High Court, Bombay, thereafter owing to jurisdictional transfer, this case has come before this Bench, to try the same u/s 9 of Insolvency & Bankruptcy Code, 2016.

2. On perusal of this Company Petition, it appears that this Petitioner raised invoices for purchase of PP Battery Containers, PP Battery Lids, PP Handles/Rope Handles and PP Battery Vent plug, against which, the Petitioner raised several invoices from 23.10.2013 to 14.2.2014 for an amount of ₹15,84,873, and thereafter when a demand was made for payment for the goods supplied, this Corporate Debtor disputed the claim of the Petitioner on the ground that goods supplied are faulty material. To prove the same, the Corporate Debtor filed emails dated 9.10.2013, 29.10.2013, and 14.1.2014, and also filed reply to the Statutory notice dated 2.7.2015 stating that the Corporate Debtor raised objection on supply of faulty materials on various occasions through emails and those issues have never been resolved by the Petitioner.

3. In Transfer Company Petitions, one point that should not get lost sight of is no occasion could arise to Petitioner to give notice u/s 8 of Insolvency & Bankruptcy Code, likewise no occasion to Corporate

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Debtor to give reply to the notice u/s 8 of the Code. Issuing section 8 notice would arise before filing petition u/s 9 of the Code because for filing petition u/s 9, issuing section 8 notice is a condition precedent, but in transfer cases where petition already being filed before Honorable High Court by virtue of operation of law being transferred to NCLT, there could not be any chance to either side to say since notice u/s 8 not being given it is to be dismissed, nor to say that dispute not raised before issuing section 8 notice, here fact of the matter is as to whether any palpable material available on record to say preexisting dispute present in the case or not. Here in this case, the Corporate Debtor having already disputed the quality of goods in the emails sent in the year 2013 and 2014 and also in the reply given to the notice u/s.434 of the Companies Act, 1956, it is sufficient enough to hold that dispute in respect to this claim has been in existence since before filing Petition u/s.434 of the Companies Act, 1956, thereby this Petition, without even going into limitation point, is hereby dismissed on the ground the claim made by the Petitioner is already in dispute before filing petition u/s 434 of Companies Act 1956 before the Hon'ble High Court of Bombay.

4. The Petitioner Counsel has refuted the contention of the Corporate Debtor saying that it is no where mentioned the details of the faulty material in the emails and reply sent to the Petitioner, therefore the emails and reply to section 434 notice have not constituted existence of

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dispute, hence forth it should not be taken into consideration for dismissal of this petition. As against this contention, when we verified the record, it is evident on record that email dated 9.10.2013 sent by the Corporate Debtor to the Petitioner has indicated type of faulty material, therefore now it cannot be said since details have not been given, the claim of the Petitioner is to be allowed. If really the petitioner could not understand which material is defective, the petitioner should have replied that sufficient details were not given to identify which material was defective, that the petitioner has not done.

5. In view of these reasons, this Petition is dismissed with liberty to approach before appropriate Forum.

Sd/-

V. NALLASENAPATHY
Member (Technical)

Sd/-

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