

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

**Company Appeal (AT) (Insolvency) No. 936 of 2023
& I.A. No. 3187 of 2023**

In the matter of:

**RP Singh
(Suspended Director of PME Infratech Pvt. Ltd.)
Vs.**

....Appellant

Melange Systems Pvt. Ltd. & Anr.

...Respondents

For Appellant

Mr. Prateek Gupta, Mr. Raghav Tiwari, Advocates.

For Respondents

Mr. Bhardwaj S. Iyengar, Advocate for R1.

ORDER

26.09.2023: Heard Learned Counsel for the Appellant.

2. This Appeal has been filed against the order dated 09.05.2023 passed by the Adjudicating Authority (National Company Law Tribunal), Mumbai Bench-IV, by which Section 9 Application filed by the Operational Creditor has been admitted.

3. The Corporate Debtor with one 'M/s. Pal Mohan Electronics Pvt. Ltd.' which was group company have been awarded a tender from the 'Maharashtra State Electricity Distribution Co. Ltd.' (MSEDCL). The Purchase Order was issued to the Operational Creditor for supply of RF Modules which was an essential item for carrying out the tender by the Corporate Debtor. Operational Creditor supplied RF Modules and issued 34 invoices amounting to Rs.5,38,47,605/-. When the payment was not made, demand notice was issued on 28.12.2019 demanding payment of the amount which notice was

not replied. Thereafter, the Application under Section 9 has been filed which has been admitted by the Adjudicating Authority.

4. Learned Counsel for the Appellant challenging the order contends that there was escrow account agreement between Operational Creditor, 'M/s. Pal Mohan Electronics Pvt. Ltd.' and the Bank under which after receipt of the amount the Bank was to distribute the amount amongst the Operational Creditor, 'M/s. Pal Mohan Electronics Pvt. Ltd.' and the Bank. It is submitted that unless the Corporate Debtor received the amount from MSEDCL, there was no liability to make the payment.

5. The Adjudicating Authority has considered submissions of the parties and has returned following findings in paragraph 4.1:-

“4.1. It is not in dispute that the Operational Creditor had supplied the material and sum of Rs. 5,38,47,605/- is outstanding as payable in the books of the Operational Creditor. It is the case of the Corporate Debtor that this sum is not due, as the payment was to be made by it after receipt of corresponding payment from MSEDCL. However, the Corporate Debtor has not produced any evidence to substantiate this plea, except one unsigned and unexecuted Escrow account agreement, amongst the Bank, Operational Creditor and Pal Mohan, which authorizes the bank to receive collections from MSEDCL on their behalf and allocate between the two. It is not on record whether this agreement was acted upon or not? In the absence of the evidences to this effect and the in light of terms stated in the purchase order,

'Against LC' and this is further confirmed from the what's app communication placed with petition also, this bench does not find any substance in the plea that the amount claimed by the Operational Creditor has not fallen due."

6. The Operational Creditor also pointed out in reply filed to Section 9 application, the Corporate Debtor has also admitted the amount of Rs.4,80,42,531/- which is clear from paragraph 10.1. Although reply denied the amount claimed in the Application but there was admission of Rs.4,80,42,531/-. The Operational Creditor having supplied the goods to the Corporate Debtor, it was entitled to raise invoices and claim the amount.

7. We do not find any error in the order of the Adjudicating Authority admitting Section 9 Application. There is no merit in the Appeal. The Appeal is dismissed.

**[Justice Ashok Bhushan]
Chairperson**

**[Barun Mitra]
Member (Technical)**

**[Arun Baroka]
Member (Technical)**

Anjali/nn