

NATIONAL COMPANY LAW APPELLATE TRIBUNAL PRINCIPAL BENCH,
NEW DELHI

Comp. App. (AT) (Ins) No.1063 of 2023

IN THE MATTER OF:

Suresh Khola

...Appellant

Versus

Abdulahdi Almailem Trading Company W.L.L. & Anr.

...Respondents

Present:

**For Appellant : Mr. Krishnendu Datta, Sr. Adv, Mr. Kaushal Gautam,
Mr. R.Arya, Mr. Rahul Gupta, Mr. Vivek Singh, Advs**

For Respondents : None

O R D E R

11.08.2023 This appeal is directed against the order dated 31.07.2023 passed by the National Company Law Tribunal, New Delhi Court-III (hereinafter referred as to 'the Adjudicating Authority') by which an application bearing IB-1140/ND/2020 filed under Section 9 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred as to 'The Code') by the Operational Creditor (Respondent No.1 herein) against the Jay ACE Technologies Limited, has been admitted.

2. Counsel for the Appellant, inter alia, submitted that the Appellant is the manufacturer of various types of car batteries and the Operational Creditor situated in Kuwait is the Distributor. It is submitted that the Operational Creditor raised a demand notice in terms of Section 8 of the Code on the basis of Minutes of Meetings dated 03.09.2019 as per which the Appellant had agreed to replace 10000 numbers of DIN batteries and 5200 numbers of JIS batteries.

3. Counsel for the Appellant has submitted that in para 6 of the said minutes, it was agreed between the parties that 'upon receipt of the first lot of new batteries from JATL, Almailem will transfer part of the payment after inspecting and observing performance of the rectified product'.

4. It is thus submitted that payment was not made by the Respondent for the batteries which are stated to be defective but still the application under Section 9 has been filed. He has also drawn our attention to an email dated 30.09.2019 sent by the Respondent to the Appellant in which the Respondent has categorically stated that except DIN types, they have paid the full amount for the agreed specified batteries. It has also submitted that if this statement of the Respondent is to be accepted as correct then it means that the payment of 10000 DIN batteries was not made by the Respondent, therefore, it would relate to the averments made in para 6 of the minutes of meeting that the payment is yet to be made by the Respondent.

5. In such circumstances, counsel for the Appellant has submitted that Section 9 application would not be maintainable because in the demand notice the Respondent has deliberately not mentioned that the amount in question is pertaining to 15200 batteries or to all the batteries supplied by the Appellant to the Respondent.

6. Issue notice to all the Respondents. Requisite along with process fee must be filed within three days.

7. Counsel for the Appellant is directed to provide today itself the email address of the Respondents for the purpose of service.

8. Registry is directed to issue notice to all Respondents on email address of the Respondents immediately after getting the same from the Appellant, intimating them about the next date of hearing as well as the order passed.
9. List this appeal under the same caption i.e. For Admission (Fresh Case) on **21st August, 2023** till then status quo shall be maintained.

[Justice Rakesh Kumar Jain]
Member (Judicial)

[Naresh Salecha]
Member (Technical)

Raushan/Kam.