

NATIONAL COMPANY LAW APPELLATE TRIBUNAL,

NEW DELHI

Company Appeal (AT) (Ins) No. 101 & 102 of 2017

IN THE MATTER OF:

Shilpi Cable Technologies Limited Appellant

v.

Macquarie Bank Ltd. Respondent

Present:

For Appellant: - Mr Abhinav Vasisht, Sr. Advocate, Mr Sumit K Batra and Ms Priya, Advocates.

For Respondent: - Mr Vivek Sibal, Ms Pooja N Saigal and Ms Khyati Sharma, Advocates.

ORDER

1.8.2017 These two appeals have been preferred by the Appellant against impugned orders both dated 24th May 2017 passed in C.P. No. (IB)-64(PB)/2017 and in C.P. No. (IB)-65(PB)/2017 whereby and whereunder the applications preferred by the Respondent (Macquarie Bank Ltd) under Section 9 of the Insolvency & Bankruptcy Code, 2016 (hereinafter referred to I&B Code) have been admitted, order of moratorium- has been passed and Insolvency Resolution Professional (hereinafter referred to as IRP) has been appointed with further direction.

2. We find that both the appeals are covered by the decision of this Appellate Tribunal in the case of Macquarie Bank Ltd v. Uttam Galva Metallics Limited who is the Respondent herein. In C.A (AT) (Ins) 96 of 2017 this Appellate Tribunal by its judgement dated 17th July 2017 held as follows: -

"10. We thereby, hold that 'Macquarie Bank', Australia not being a 'financial institution' within the meaning of sub-section (14) of Section 3 of the 'I & B Code', any certificate given by the said bank cannot be relied upon, to decide default of debt.

19. In the present case, as the notice has been given by an advocate/lawyer and there is nothing on the record to suggest that the lawyer was authorized by the appellant, and as there is nothing on the record to suggest that the said lawyer/advocate hold any position with or in relation to the appellant company, we hold that the notice issued by the advocate/ lawyer on behalf of the appellant cannot be treated as notice under Section 8 of the 'I & B Code'. And for the said reason also the petition under Section 9 at the instance of the appellant against the respondent was not maintainable."

3. In these appeals we find that the Respondent, Macquarie Bank Ltd., has not enclosed any certificate from 'financial institution' as defined under sub-section (14) of Section 3 of the I&B Code and Lawyer's notice as given has been deprecated by the 'adjudicating authority'.

4. In effect, order (s), if any, passed by Ld. Adjudicating Authority appointing any 'Interim Resolution Professional' or declaring moratorium, freezing of account and all other order (s) passed by Adjudicating Authority pursuant to impugned order and action, if any, taken by the 'Interim Resolution Professional', including the advertisement, if any, published in the newspaper calling for applications all such orders and actions are declared illegal and are set aside. Learned Adjudicating Authority will now close the proceeding. The appellant company is released from all the rigour of law and is allowed to function independently through its Board of Directors from immediate effect.

5. Learned Adjudicating Authority will fix the fee of IRP, if appointed and the Appellant will pay the fees of the IRP, for the period the IRP has functioned.

6. For the reasons aforesaid we set aside both the orders dated 24th May 2017 passed in C.P. No. (IB)-64(PB)/2017 and in C.P. No. (IB)-65(PB)/2017. Both the appeals are allowed with aforesaid observations.

7. We may make it clear that we have not decided the other issues raised in these appeals.

(Justice S.J. Mukhopadhaya)
Chairperson

(Mr. Balvinder Singh)
Member (Technical)

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