

NATIONAL COMPANY LAW APPELLATE TRIBUNAL, NEW DELHI

Company Appeal (AT) (Insolvency) No. 883 of 2019

IN THE MATTER OF:

SBF Pharma

...Appellant

Vs.

Gujarat Liqui Pharmacaps Pvt. Ltd.

...Respondent

Present: For Appellant: - Mr. Jaideep Dhillon and Ms. Shilpi Chowdhary, Advocates.

For Respondent: - Mr. Niki Kantawala and Ms. Sayli Petiwale, Advocates.

O R D E R

25.11.2019— The Appellant- 'SBF Pharma'- ('Operational Creditor') filed an application under Section 9 of the Insolvency and Bankruptcy Code, 2016 ('I&B Code' for short) for initiation of the 'Corporate Insolvency Resolution Process' against 'M/s. Gujarat Liqui Pharmacaps Private Limited'- ('Corporate Debtor') for default of Rs.10,47,500/-. In a petition under Section 9, it was shown that a sum of Rs.7,50,000/- was payable towards the principal amount and Rs.2,47,500/- towards interest and Rs.50,000/- towards legal charges, total amounting to Rs.10,47,500/-.

2. The Adjudicating Authority (National Company Law Tribunal), Ahmedabad Bench, Ahmedabad by impugned order dated 15th July, 2019 taking into consideration the objective of the 'I&B Code' and the fact that efforts were earlier made by the Respondent to settle the issue but the 'Operational Creditor' refused to settle the same, hence rejected the application.

Contd/-.....

3. Earlier counsel for the Appellant submitted that the Respondent wanted to settle the matter and issued Demand Draft for Rs.7,50,000/- towards the full and final payment. However, it was not accepted by the Appellant.

4. According to counsel for the Appellant, the Appellant has the right to get the interest over and above the principal amount. However, we are not inclined to accept such submissions.

5. Section 65 relates to '*fraudulent and malicious initiation of proceedings*' and reads as follows:

“65. Fraudulent or malicious initiation of proceedings.—*(1) If, any person initiates the insolvency resolution process or liquidation proceedings fraudulently or with malicious intent for any purpose other than for the resolution of insolvency, or liquidation, as the case may be, the Adjudicating Authority may impose upon a such person a penalty which shall not be less than one lakh rupees, but may extend to one crore rupees.*

(2) If, any person initiates voluntary liquidation proceedings with the intent to defraud any person, the Adjudicating Authority may impose upon such person a penalty which shall not be less than one lakh rupees but may extend to one crore rupees.”

6. From the aforesaid provision, it is clear that if, any person initiates the Insolvency Resolution Process or Liquidation Proceedings

fraudulently or with malicious intent for any purpose other than for the resolution of insolvency, or liquidation, such application is fit to be rejected.

7. In the present case, we find that the Respondent- 'Corporate Debtor' is not insolvent and viable and feasible to pay the claim amount. Only for recovery of the interest, the Appellant is pursuing the Insolvency Resolution Process which, according to us, is malicious intent for any purpose other than for the resolution of insolvency, or liquidation.

8. For the reasons aforesaid, we are not inclined to grant any relief to the Appellant. However, if the Appellant agrees to settle the matter on receipt of principal amount of Rs. 7,50,000/- towards full and final payment, it will be open to the Appellant to request the 'Corporate Debtor' to renew the draft already lapsed.

The appeal stands disposed of with aforesaid observations. No costs.

(Justice S.J. Mukhopadhaya)
Chairperson

(Justice Bansi Lal Bhat)
Member(Judicial)

(Justice Venugopal M)
Member(Judicial)

Ar/g