

NATIONAL COMPANY LAW APPELLATE TRIBUNAL, NEW DELHI

Company Appeal (AT) (Insolvency)No.684 of 2019

IN THE MATTER OF:

Mr. Paresh Patel

.....Appellant

Vs.

M/s. Shah Kirit Kumar Babulal Ni Company & Ors.

.....Respondents

Present :

For Appellant:

Mr. Ravi Sharma, Mr. A.Mishra, Advocates

For Respondents:

Mr. Sunil Kumar Aggarwal, Advocate for R-2

Mr. Harshit Chopra, Mr. Pankaj Vivek, Advocates

O R D E R

29.07.2019 - The Appellant challenged the impugned order dated 7th June, 2019 whereby an application u/s 9 of the Insolvency & Bankruptcy Code, 2016 ('I&B' Code, for short) preferred by Respondent – 'Shah Kirit Kumar Babulal Ni Company' was admitted against 'M/s H.M. Industrial Private Ltd. ('Corporate Debtor').

2. On 15th July, 2019, when the matter was taken up, taking into consideration, the submission made by the learned counsel for the

...contd.

Appellant, the following observations were made by this Appellate Tribunal:-

“O R D E R

15.07.2019 *The only ground taken by the Appellant is that the application u/s 9 of the ‘Insolvency and Bankruptcy Code, 2019 filed by the 1st Respondent – ‘M/s. Shah Kiritkumar Babulal Ni Company’ (Operational Creditor) was admitted by the impugned order dated 7th June, 2019 without notice to the ‘Corporate Debtor’. However, if on such ground we remit the case to the Adjudicating Authority that will be futile and we wanted to know the grounds the ‘Corporate Debtor’ could have opposed.*

It is submitted that there is no documents or agreement in support of the claim.

However, from the impugned order we find that ‘Operational Creditors’ had produced records which enclosed the copies of the invoices, copies of the translated invoices for castor seed, invoices for sacks and debit memo and copies of invoices of sacks issued by the ‘Corporate Debtor’ to the ‘Operational Creditor’. It is also placed on record the certified copy of the GST certification of provisional registration issued by the Government of India and in support of the claim as shown that the ‘Corporate Debtor’ issued a cheque dated

...contd.

17th August, 2018 for the claimed amount drawn on Bank of Baroda for Rs. 5,47,69,909/- in favour of the 'Operational Creditor' which appears to have been bounced. A copy of 'Form C' has also been showing that Demand Notice u/s. 8(1) was issued by the 'Operational Creditor'. It appears that no reply has been filed. Learned counsel appearing on behalf of the Appellant submits that the quality of the goods are not up to the mark but there is nothing on record to suggest that any dispute was raised with regard to the quality of the product prior to issuance of the Demand Notice u/s 8(1) of the I&B Code on 20th October, 2018. It was in this background, we are not inclined to remit the case as it would have been futile in absence of any objection.

At this stage, learned counsel appearing on behalf of the Appellant prays for some time to obtain instructions as if there is any 'pre-existence dispute' and service of the same on the 'Operational Creditor' prior to 28th October, 2018. On his request, the appeal is adjourned. The Appellant may file an additional affidavit within a week.

*Post the case 'for orders' on **29th July, 2019**. The appeal may be disposed of on the next date."*

...contd.

3. Learned counsel appearing on behalf of the Appellant on instructions submits that there is no document to show pre-existing dispute.

4. It is also not been disputed that the 'Corporate Debtor' was liable to pay the debt which it defaulted. In the circumstances, only on the ground that the Appellant ('Corporate Debtor') did not get notice before passing of the impugned order, we are not inclined to set aside the order dated 7th June, 2019 as the remand would be futile even after opportunity is given as the application u/s 9 would still be liable to be admitted.

The appeal is dismissed. No. costs.

[Justice S. J. Mukhopadhaya]
Chairperson

[Justice A. I. S. Cheema]
Member (Judicial)

[Kanthi Narahari]
Member (Technical)

ss/sk