

NATIONAL COMPANY LAW APPELLATE TRIBUNAL, NEW DELHI

Company Appeal (AT) (Insolvency)No. 678 of 2019

IN THE MATTER OF:

Amrit Feeds Ltd.

.....Appellant

Vs.

S.S. Enterprises

.....Respondents

Present :

For Appellant:

**Mr. Diwakar Maheshwari, Mr. Vivek Jhunjunwala,
Partiksha Mishra, Advocates**

O R D E R

04.07.2019 - The Appellant - 'Amrit Feeds Limited' ('Corporate Debtor') has challenged the order dated 10th May, 2019 passed by the Adjudicating Authority, (National Company Law Tribunal), Kolkata Bench restoring petition u/s 9 of the Insolvency & Bankruptcy Code, 2016 ('I&B' Code) filed by the S.S. Enterprises' ('Operational Creditor').

2. The brief facts of the case is that a 'Corporate Insolvency Resolution Process' was initiated against 'Amrit Feeds Limited' ('Corporate Debtor') by order dated 15th January, 2019 passed in CP (IB) No. 333/KB/2018 on an application u/s 9 preferred by 'Agarwal Industries Pvt. Ltd.'

3. Subsequently, another application u/s 9 of the Insolvency & Bankruptcy Code, 2016 ('I&B' Code) was preferred by Respondent 'S.S. Enterprises', ('Operational Creditor') against 'Amrit Feeds Limited' ('Corporate Debtor'), being CP (IB) No. 1238/KB/2018.

....contd.

4. The Adjudicating Authority, Kolkata Bench having noticed that the 'Corporate Insolvency Resolution Process' has already been initiated against 'Amrit Feeds Limited' ('Corporate Debtor') by order dated 25th January, 2019 directed the Applicant – 'S.S. Enterprises' (Respondent herein) to file its claim before the 'Interim Resolution Professional' and thereby disposed of the application.

5. The 'Corporate Insolvency Resolution Process' initiated against 'Amrit Feeds Limited' ('Corporate Debtor') pursuant to order passed in CP (IB) No. 333/KB/2018 was challenged by promoter of 'Amrit Feeds Limited' ('Corporate Debtor') before this Appellate Tribunal in Company Appeal (AT)(Insolvency) No. 102/2019. In the said case, the parties settled the matter and this Appellate Tribunal by order dated 11th February, 2019, set aside the order of initiation of 'Corporate Insolvency Resolution Process' against 'Amrit Feeds Limited' ('Corporate Debtor').

6. In the said Company Appeal (AT)(Insolvency) No. 102/2019, it was not brought to the notice of this Appellate Tribunal that the Adjudicating Authority by order dated 25th January, 2019 had not entertained the application u/s 9 filed by S.S. Enterprise (Respondent – 'Operational Creditor' herein) and S.S. Enterprises was asked to raise claim before the 'Interim Resolution Professional' appointed pursuant to order passed in CP (IB) No. 333/KB/2018.

7. The Respondent – 'S.S. Enterprises' having come to know that the 'Corporate Insolvency Resolution Process' as was initiated against 'Amrit Feeds

Limited' ('Corporate Debtor') has been closed due to settlement allowed by this Appellate Tribunal on 11th February, 2019 brought the same to the notice of the Adjudicating Authority by filing an application - MA 302/KB/2019 with prayer to restore the Company Petition No. CP (IB) No. 1238/KB/2018 which has been restored by the Adjudicating Authority, Kolkata Bench by impugned order dated 10th May, 2019 and reads as follows: -

ORDER

“None appears for the Operational creditor as well as corporate debtor. Misc.A. 302/KB/2018 is filed by the operational creditor for restoration of earlier CP, which was disposed off by this authority on technical ground. Application in MA 302/KB/19 is allowed and stand disposed off. Main CP is restored Corporate Debtor to now directed to file affidavit-in-reply within two weeks by giving copy to the other side and the operational creditor to file rejoinder within seven days thereafter. Main CP to appear on 15.07.2019 for further consideration.”.

8. The Appellant ('Corporate Debtor') submitted that the Adjudicating Authority (National Company Law Tribunal) ('NCLT'), Kolkata Bench has no jurisdiction to recall its earlier order having no power of review or to recall.

9. Further according to him, the Respondent should have issued a fresh Demand Notice u/s 8(1) and only thereafter should have preferred a fresh application u/s 9 of the Insolvency & Bankruptcy Code, 2016 ('I&B' Code).

10. It is further submitted that before Restoration of the application and passing of order in MA No. 302/KB/19 the 'Corporate Debtor', should have been noticed and heard.

11. However, such submissions cannot be accepted for the following reasons:-

- (i) The 'S.S. Enterprises' having already issued Demand notice u/s 8(1) and thereafter as the 'Corporate Debtor' ('Amrit Feeds Limited') failed to pay the amount, the Respondent 'S.S. Enterprises' ('Operational Creditor') had filed the application u/s 9 against the 'Corporate Debtor'.
- (ii) The Petition filed by the Respondent - 'S.S. Enterprises' ('Operational Creditor') was made infructuous only because the 'Corporate Insolvency Resolution Process' was initiated against 'Amrit Feeds Limited' ('Corporate Debtor'). Subsequently, the promoters of the 'Amrit Feeds Limited' ('Corporate Debtor') reached settlement with 'Agarwal Industries Pvt. Ltd.' which is one of the 'Operational Creditor', but suppressed the fact and did not brought to the notice of this Appellate Tribunal, that the 'Corporate Debtor' had received Demand Notice u/s 8(1) from another 'Operational

Creditor' namely 'S.S. Enterprises' (Respondent herein) who had filed petition u/s 9 of the Insolvency & Bankruptcy Code, 2016 ('I&B' Code) and ordered to file claim before the 'Interim Resolution Professional'.

12. For the aforesaid reason, the Adjudicating Authority, Kolkata Bench in exercise of power conferred by Rule 11 of the NCLT Rules, 2016 having restored the petition u/s 9 to its original file, we find no illegality in the impugned order.

13. In so far hearing of the Appellant 'Amrit Feeds Limited' ('Corporate Debtor') is concerned, the petition having restored, the Appellant - 'Amrit Feeds Limited' ('Corporate Debtor') will be given notice by the Adjudicating Authority before passing any order in the application u/s 9 preferred by 'S.S. Enterprises'('Operational Creditor').

14. In view of our finding as recorded above, we are not inclined to interfere with the impugned order. The appeal is accordingly dismissed. No costs.

[Justice S. J. Mukhopadhaya]
Chairperson

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

[Kanthi Narahari]
Member (Technical)

ss/sk