

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
NEW DELHI

COMPANY APPEAL(AT)(INSOLVENCY) NO.201 OF 2017

IN THE MATTER OF:

SAK Industries Pvt Ltd

Appellant

Vs

Fenance Auto Ltd

Respondents

Present:

For Appellant:-Mr Anuj Kumar with Mr. Anuj Verma, Advocates.

For Respondents: - None.

ORDER

15.11.2017 - This appeal has been preferred by the appellant, M/s SAK Industries Pvt Ltd (hereinafter referred to as the “operational creditor) against the order dated 19th July, 2017 passed by the Adjudicating Authority (National Company Law Tribunal), New Delhi whereby and whereunder the application preferred by appellant under Section 9 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as “I&B Code”) has been rejected on the ground that the defects have not been removed within 7 days which is mandatory in terms of the decision of the Appellate Tribunal in the case of ***Smart Timing Steel Ltd Vs National Steel and Agro Industries Ltd.***

Notice was issued on Respondents but in spite of service of notice it did not choose to appear nor disputed the facts stated in the appeal.

Learned counsel for the appellant brought to the notice of this Appellate Tribunal the decision of the Hon’ble Supreme Court in the case of ***M/s Surendra Trading Company Vs M/s Juggilal Kamlatpat Jute Mills Company Ltd and***

2.

Others, Civil Appeal No.8400 of 2017 etc. In the said case the Hon'ble Supreme Court by its judgement dated 19th September, 2017 has held that sub-section (5) of Section 7 or proviso to sub-section (5) of Section 9 or proviso to sub-section (4) of Section 10 relating to removing of defects within 7 days is not mandatory. The judgement of the Appellate Tribunal to that extent has been set aside.

In view of the aforesaid decision of the Hon'ble Supreme Court, we have no other option but to set aside the impugned order dated 19th July, 2017. It is accordingly set aside. The case is remitted back to the Adjudicating Authority, who after notice to the parties will consider the case. If there is any defect, the appellant be allowed time to remove the defects. The appeal is allowed with the aforesaid observations. However, in the facts and circumstances there shall be no order as to cost.

(Justice S.J. Mukhopadhaya)
Chairperson

(Justice Bansi Lal Bhat)
Member (Judicial)