

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
NEW DELHI

Company Appeal (AT)(Ins) No. 448 of 2019

IN THE MATTER OF:

M.S.G. Bhuvan Kumar

...Appellant

Versus

CDS Soles Pvt. Ltd. & Anr.

...Respondents

For Appellant: Ms. Shalini Kaul, Advocate

O R D E R

29.04.2019 - This appeal has been preferred by '**M.S.G. Bhuvan Kumar**', Joint Managing Director of **M/s. GKK Exports Private Limited** ('Corporate Debtor') against order dated 1st March, 2019 passed by Adjudicating Authority (National Company Law Tribunal) Single Bench, Chennai, admitting application u/s 9 of (Insolvency & Bankruptcy Code) ('I&B Code'), 2016 filed by **CDS Soles Pvt. Ltd.** ('Operational Creditor').

Learned counsel appearing on behalf of Appellant submitted that the 'Corporate Debtor' was not given notice and without any notice the impugned order dated 1st March, 2019 was passed.

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....contd.

However, to find out whether by remand for hearing would be futile or substantiate decision can be taken, we wanted to know from the learned counsel for the Appellant, if notice had been served what 'Corporate Debtor' would have pleaded before the Adjudicating Authority.

In reply, learned counsel for the Appellant submitted that there is a pre-existing dispute and the claim was barred by limitation. Reliance has been placed on a chart at page – 56 to show that all the invoices relate to the period of 2009. However, from the record, we find that the Respondent – 'Operational Creditor' filed a civil suit no. 361/2014 before the Hon'ble High Court of Madras under ordinary civil jurisdiction against the 'Corporate Debtor' and its Director. Hon'ble High Court passed decree on 15th February, 2017 in favour of the 'Operational Creditor' and directed the 'Corporate Debtor' to pay a sum of Rs. 89,81,317.39 along with interest @ 18% p.a. on the sum of Rs. 61,03,881/- from the date of decree till the realisation.

Learned counsel for Appellant submits that the aforesaid decree was ex-parte decree which is under challenge. That cannot be a ground to hold that the claim is barred by limitation or there is a pre-existing dispute.

In the circumstances, we find no ground to remand the matter to the Adjudicating Authority which would otherwise be futile and the case is rightly be admitted.

In the absence of any merit, the appeal is dismissed. No costs.

[Justice S.J. Mukhopadhaya]
Chairperson

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

[Kanthi Narahari]
Member (Technical)

ss/gc

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