NATIONAL COMPANY LAW APPELLATE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

Company Appeal (AT) (Insolvency) No. 54 of 2021

IN THE MATTER OF:

Ravinder Kumar Kalra (Director of Suspended Board of Evershine Solvex Pvt. Ltd.) ...Appellant

Versus

Ricela Health Foods Limited & Ors. ...Respondents

Present:

Appellant: **Mr. Aalok Jagga & Mr. Ajay Pal Singh Madaan, Advocates.**

Respondents: **Mr. Harsh Garg & Mr. Pulkit Goyal, Advocates for R1.**

Mr. Abhishek Anand, Mr. Kunal Godhwani, Mr. Viren Sharma & Ms. Komal Abrol, Advocates for R2.

O R D E R
(Through Virtual Mode)

01.02.2021: Application of Respondent – 'M/s Ricela Health Foods Limited' filed under Section 9 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as 'I&B Code') against 'M/s Evershine Solvex Private Limited' (Corporate Debtor) came to be admitted in terms of admission order dated 27th February, 2020 passed, after the Corporate Debtor was set ex-parte in terms of order dated 17th February, 2020, by the Adjudicating Authority (National Company Law Tribunal), Chandigarh Bench, Chandigarh. The Corporate Debtor filed I.A. No. 283 of 2020 under Section 60(5) of the I&B Code read with Rules 11, 49, 110 of NCLT Rules, 2016 for setting aside of the same. The ground agitated in the application for setting aside of the order of

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admission related to effecting service upon the Corporate Debtor. It was argued before the learned Adjudicating Authority that the service was not valid. However, the learned Adjudicating Authority, taking note of the fact that the tracking report of Postal Department established service of notice upon the Corporate Debtor which had not been disputed as being fabricated, forged or obtained by fraud, rejected the contention of the Corporate Debtor that the service was invalid. The Adjudicating Authority declined to go into the merits of the case.

2. The issue raised in this appeal is that the application under Section 9 was not maintainable and that the Respondent was not an Operational Creditor as no purchase order/ invoice and other related documents were produced before the Adjudicating Authority to establish existence of an operational debt and occurrence of default. It is apparent that the Appellant has assailed the impugned order of admission as also the impugned order in terms whereof application filed under Section 60(5) has been dismissed.

3. After hearing learned counsel for the Appellant we are of the view that since the order passed by the Adjudicating Authority on 17th February, 2020 setting the Corporate Debtor ex-parte is the edifice for the order of admission dated 22nd February, 2020 and the order of dismissal of application under Section 60(5) of I&B Code dated 15th December, 2020 being only as a sequel thereto, the Appellant is required to establish that the order dated 17th

February, 2020 by virtue whereof the Corporate Debtor was set ex-parte is unsustainable. It appears from record that the only ground projected in this regard is that non-appearance of Corporate Debtor before the Adjudicating Authority was relatable to non-service of the notice issued by the Adjudicating Authority upon the Corporate Debtor. It appears that notice had been directed to be served through Speed Post and the tracking report of the Postal Department was taken on record by the Adjudicating Authority which confirmed delivery of notice upon the Corporate Debtor. Admittedly, the factum of the tracking report confirming delivery of notice upon Corporate Debtor was not disputed. No allegation in the nature of fabrication, forgery or fraud in regard to service of notice through the speed post was forthcoming from the Corporate Debtor. Once that was the position, the Adjudicating Authority was justified in declaring service of notice having been effected on the Corporate Debtor. The limited notice issued upon Corporate Debtor having been declared served, the matter appears to have been adjourned to 27th February, 2020. Admittedly, the Corporate Debtor did not put in his appearance and raise any issue in regard to maintainability of the application. It is therefore futile on the part of the Appellant to contend that the Adjudicating Authority did not decide the issue of maintainability of the application of the Respondent – Operational Creditor.

4. The Adjudicating Authority is obligated under law to issue a limited notice to Corporate Debtor at the pre-admission stage of application filed

under Section 9 of the I&B Code. Under Section 9(5), the Adjudicating Authority is required to pass an order of admission on being satisfied about completion of application and there being an unpaid operational debt and default in its payment. The object of limited notice is to enable the Adjudicating Authority to satisfy itself that there is no pre-existing dispute qua the operational debt and no suit or arbitration proceeding in relation to such dispute was pending before the receipt of demand notice by Corporate Debtor as contemplated under Section 8(1) of the I&B Code. If the Corporate Debtor did not choose to appear in response to the notice issued upon it and did not take stand as regards a pre-existing dispute qua the operational debt, it cannot be heard to say that no opportunity of being heard has been provided to it. Viewed in this perspective, consideration of issue of maintainability by the Adjudicating Authority would be of no consequence if the same were neither raised in reply to the demand notice nor in reply to notice served upon the Respondent. The impugned order dated 15th December, 2020 was limited to dismissal of I.A. No. 283/2020 seeking setting aside of ex-parte order dated 17th February, 2020 culminating in passing of order of admission dated 27th February, 2020 limited to the ground of service of notice being invalid. Such ground not having weighed with the Adjudicating Authority, we find no infirmity in its dismissal in terms of the impugned order. That apart, no dispute has been raised qua the operational debt. It is not in controversy that the Corporate Debtor has not even responded to the demand notice dated 8th

March, 2019. The conclusion drawn by the Adjudicating Authority that there is no dispute as to the liability of Corporate Debtor qua operational debt towards the Operational Creditor cannot be termed erroneous or flawed. It is significant to note that out of outstanding liability of Rs.27 Lakhs claimed by the Operational Creditor in terms of the demand notice served upon the Corporate Debtor, an amount of Rs.8 Lakhs vide two transactions dated 9th April, 2019 (Rs.3 Lakhs) and 22nd April, 2019 (Rs.5 Lakhs) stand paid to the Operational Creditor reducing the default from Rs.27 Lakhs to Rs.19 Lakhs. The record in the form of copy of Ledger Account maintained by the Operational Creditor has been taken notice of by the Adjudicating Authority. With this development, it is absurd on the part of Appellant to contend that the application seeking triggering of Corporate Insolvency Resolution Process at the instance of Operational Creditor was not maintainable.

5. On consideration of all aspects of the controversy raised in this appeal, we are of the considered opinion that the Appeal is bereft of merit. The appeal is accordingly dismissed.

[Justice Bansi Lal Bhat]
Acting Chairperson

[Dr. Ashok Kumar Mishra]
Member (Technical)

[Dr. Alok Srivastava]
Member (Technical)

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