

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
NEW DELHI

Company Appeal (AT) (Insolvency) No. 262 of 2017

IN THE MATTER OF:

D-ART Furniture Systems Pvt. Ltd.

.. Appellant

Versus

Sudhir Sales & Service Ltd.

.. Respondent

Present:

For Appellant: Shri Sumesh Dhawan, Ms. Vatsala Kak and Ms. Charu Sharma, Advocates.

For Respondent: Shri Y. Sarat Chandra, Advocate.

ORDER

21.11.2017 This appeal has been preferred by Appellant-M/s D-ART Furniture Systems Pvt. Ltd. against the order dated 24th October, 2017 passed by the Adjudicating Authority (National Company Law Tribunal) Principal Bench, New Delhi in C.P. No. (IB)-313(PB)/2017 whereby and whereunder the Adjudicating Authority taking into consideration the Preliminary objections raised by Corporate Debtor, allowed 7 days' time to issue proper notice to the Appellant-Corporate Debtor under sub-Section (1) of Section 8 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as '**I&B Code**').

2. Learned Counsel for the Appellant submits that the notice under sub Section (1) of Section 8 of 'I&B Code' was issued by an Advocate so it has been held to be illegal. In view of decision of this Appellate Tribunal in '**Uttam Galva Steels Limited Vs. DF Deutsche Forfait AG & Anr.**' - Company Appeal (AT)(Ins) No. 39 of 2017 wherein this Appellate Tribunal observed:

“31 The demand notice/invoice Demanding Payment under the I&B Code is required to be issued in Form-3 or Form-4. Through the said formats, the 'Corporate Debtor' is to be informed of particular of 'Operational Debt', with a demand of payment, with clear understanding that the 'Operational Debt' (in default) required to pay the debt, as claimed, unconditionally within ten days from the date of receipt of letter failing which the 'Operational Creditor' will initiate a Corporate Insolvency Process in respect of 'Corporate Debtor', as apparent from last paragraph no. 6 of notice contained in Form-3, and quoted above.

Only if such notice in Form-3 is served, the 'Corporate Debtor' will understand the serious consequences of non-payment of 'Operational Debt', otherwise like any normal pleader notice/Advocate notice, like notice under Section 80 of C.P.C. or for proceeding under Section 433 of the Companies Act 1956, the 'Corporate Debtor' may decide to contest the suit/case if filed, distinct Corporate Resolution Process,, where such claim otherwise cannot be contested, except where there is an existence of dispute, prior to issue of notice under Section 8.”

3. According to learned Counsel for the Appellant, in absence of a separate notice under sub –Section (1) of Section 8 of the I&B Code, no application can

be entertained under Section 9 of the I&B Code. Notice issued by a lawyer cannot be termed to be a defect occurring in the application under Section 9 of the I&B Code.

4. Having heard learned Counsel for the parties, while we accept the submissions made on behalf of the Appellant that no Application under Section 9 can be entertained by Adjudicating Authority before completion of 10 days of service of notice under sub-Section(1) of Section 8, learned Counsel appearing on behalf of the Respondent submits that he has been instructed to withdraw the application under Section 9 from the Court of the Adjudicating Authority, Principal Bench, New Delhi with a liberty to issue notice under sub-Section (1) of Section 8, in accordance with law and then in the case of failure of payment, may file a fresh Application under Section 9 of the I&B Code.

5. In view of such stand taken by the learned Counsel for Respondent, we allow the prayer as made on behalf of Respondent and recorded above. In the result the Company Petition No. (IB)-313(PB)/2017 is dismissed as withdrawn with liberty to the Respondent – ‘Operational Creditor’ to issue proper demand notice under Section 8(1) through its authorised representative holding post & position with the ‘Operational Creditor’ and in case of failure to pay the admitted debts it is open to the Respondent- ‘Operational Creditor’ to file a fresh application under Section 9 of I&B Code.

6. In view of the order recorded above, the Adjudicating Authority, Principal Bench, New Delhi will close the proceeding in C.P. No. C.P. No. (IB)-313)PB)/2017. The appeal stands disposed of with the aforesaid observation and liberty to the Respondent. No Cost.

[Justice S.J. Mukhopadhaya]
Chairperson

[Justice Bansi Lal Bhat]
Member (Judicial)

/akc/