

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
NEW DELHI

Company Appeal (AT) (Insolvency) Nos. 308 - 309 of 2019

**[arising out of Orders dated 18th February & 22nd February, 2019 by
NCLT, Chandigarh Bench, in CP (IB) No. 288/Chd/Pb/2018]**

In the matter of :

Sumit Aggarwal,

Resident of 47, Panchsheel Vihar,
Ludhiana - 141 002

... Appellant

Versus

1. Silvertan Papers Limited

Having Registered office at
C-107, Ground Floor , Shop No. 4
DDA Flat, West Gorakh Park,
Shahdara, Delhi - 110 032

2. Shri Rakesh Ahuja,

Interim Resolution Professional,
R/o 2238, Sector 18, HUDA,
Panipat, Haryana.

3. BBF Home Care Products Limited,

Having registered office at
Village Khasi Kalan,
Tajpur Road,
Ludhiana - 141 011

... Respondents

Present:

For Appellant :

Mr. Gautam Singh, Advocate

For Respondents:

**Mr. Alok Kumar Kuchhal, Advocate for
Respondent No.1**

**Mr. Arun Kathpalia, Senior Advocate with
Mr. Akshat Jain and Mr. Raghav Malhotra,
Advocates for Respondent No. 2**

Mr. Rakesh Ahuja, IRP

J U D G M E N T**SUDHANSU JYOTI MUKHOPADHAYA, J.**

These appeals have been preferred by Director/Shareholder of 'BBF Home Care Products Limited' against judgment dated 18th February, 2019 and order dated 22nd February, 2019 both passed by the Adjudicating Authority (National Company Law Tribunal), Chandigarh Bench. By judgment dated 18th February, 2019, the Adjudicating Authority admitted the application under Section 9 of the 'Insolvency and Bankruptcy Code, 2016 (for short, 'the I&B Code') filed by Respondent - 'Silvertoan Paper Limited (Operational Creditor) against the 'Corporate Debtor'. By subsequent order dated 22nd February, 2019, the Adjudicating Authority passed order of 'Moratorium' and appointed 'Interim Resolution Professional'.

2. Learned counsel appearing on behalf of the Appellant submitted that the impugned judgment dated 18th February, 2019 and order dated 22nd February, 2019 have been passed by the Adjudicating Authority *ex parte* without giving adequate notice and without hearing the 'Corporate Debtor'. It was submitted that the application was filed on 9th October, 2017 being 'CP(IB) No. 92/Chd/Pb/2017 which was withdrawn by the 'Operational Creditor' on technical grounds with liberty to approach again. The 'Operational Creditor' after removing the defects, second time filed the application under Section 9 of the 'I&B Code' on 16th March, 2018. In the said case, the 'Corporate Debtor' appeared, contested the same and the case was dismissed. Subsequently, third time the application in CP No.

288/Chd/Pb/2018 was filed by the Respondent (Operational Creditor) in August/September, 2018. In the said case a notice was issued once on 26th October, 2018 which is alleged to have returned with remark 'Factory Closed', though according to the Appellant the factory of the Appellant was always open. It was contended that no second attempt was made to issue notice to the 'Corporate Debtor' and *ex parte* order was passed.

3. Learned counsel appearing on behalf of the Appellant also submitted that the application under Section 9 of the 'I&B Code' was barred by limitation as the invoices pertain to the year 2008.

4. It was further submitted that a Civil Suit No. 1605 of 2012 has been filed by 'Operational Creditor' for recovery of the said amount in the Court of Muzaffarnagar, Uttar Pradesh, though the registered office of the 'Corporate Debtor' is at Ludhiana, Punjab.

5. According to the Appellant, he having come to know the impugned judgment dated 18th February, 2019 and an order dated 22nd February, 2019, invoked 'Corporate Debtor' statutory right by filing application to set aside the *ex parte* order which is pending with the Adjudicating Authority for adjudication. It was further submitted that the application under Section 9 of the 'I&B Code' was not maintainable as the claim was barred by limitation and there being an 'existence of dispute'.

6. Learned counsel appearing on behalf of the 1st Respondent submitted that the Demand Notice was issued to the 'Corporate Debtor' on 15th October, 2018 vide Speed Post No. EP50908592IN and the service of notice was

reported by 'India Post' as recorded while order was passed by the Adjudicating Authority on 18th February, 2019 and 22nd February, 2019.

7. It was further submitted that the Appellant issued Demand Notice under Section 8(1) of the 'I&B Code' but no dispute was ever raised by the 'Corporate Debtor'.

8. Learned counsel appearing on behalf of the 1st Respondent while raised question of limitation in preferring the appeal, orders having issued on 18th February, 2019 and 22nd February, 2019 but as certified copies of both the orders were issued on 12th March, 2019, we hold that the appeal is within the time.

9. Insofar as suit is concerned, it is submitted that the Recovery Suit bearing No. 1606/2012 and another Suit bearing No. 1459 of 2012 have been decreed against the 'Corporate Debtor' and its 'group companies' on 24th October, 2018 and 11th May, 2018. Total three decrees have been passed against the 'Corporate Debtor' and its group companies. In the meantime, consolidated settlement was arrived at between the parties on 15th June, 2009 for Rs.51,50,000/- which includes amount of Rs. 8,97,856/- which is the claim amount and interest thereon.

10. C.P. No. 92 of 2017 which was preferred originally by the 1st Respondent was withdrawn on 24th October, 2017 for non-mentioning of the word 'NCLT' and 'IBC' in resolution.

11. The 2nd C.P. No. 25 of 2018 was filed wherein it was pointed out that the amount of demand notice vary from the amount decreed and therefore 1st

Respondent (Operational Creditor) was asked to withdraw the petition. In aforesaid circumstances, the CP No. 288 of 2018 was filed by 'Operational Creditor' without any defect wherein notice was issued on 26th October, 2018 which returned back with postal remarks '*factory is closed*'. Thereafter, it was ordered to serve notice by *e-mail*. On 20th November, 2018 an affidavit was filed with original postal report showing service. Thereafter, the application under Section 9 was heard on 17th January, 2019 and final order was passed on 18th February, 2019 and followed by order dated 22nd February, 2019.

12. From the record, we find that the 1st Respondent raised Invoice No. 550 dated 11th October, 2011 for Rs.9,60,841/-; Invoice No. 785 dated 21st December, 2011 for Rs. 8,43,795/- and Invoice No. 885 dated 20th January, 2011 for Rs. 4,50,024/- (total Rs. 22,54,660/-). According to 1st Respondent out of the said amount a sum of Rs. 16,95,000/- had been paid by the 'Corporate Debtor' and the last amount paid in March, 2014. According to 1st Respondent with a view to recover the balance amount of Rs.5,59,660/- a Summary Suit No. 217/2014 was filed in the Court of Sr. Civil Judge, Ahmedabad (Rural), A Mirzapur, Ahmedabad-I wherein *ex parte* decree was passed against the 'Corporate Debtor' on 19th October, 2016 for Rs. 5,59,660/- with simple interest @ 8% per annum from the date of filing of the suit till the date of its realization.

13. Thereafter, the amount having not paid the Demand Notice in Form 3 under Section 8(1) was issued on 15th February, 2017 followed by filing of petition under section 9. The facts as noted and detailed above makes it clear that the claim of the 1st Respondent is not barred by limitation.

14. In view of the aforesaid observations, we are not inclined to remit the case which will be otherwise futile exercise, as there is a 'debt' payable by 'Corporate Debtor, who defaulted and the claim being not barred by limitation, the application has been rightly admitted.

We find no merit in this appeal. It is accordingly dismissed. No costs.

[Justice S.J. Mukhopadhaya]
Chairperson

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

[Kanthi Narahari]
Member (Technical)

New Delhi

17th September, 2019

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